NEWFOUNDLAND & LABRADOR

1991 WORKERS' COMPENSATION

STATUTORY REVIEW

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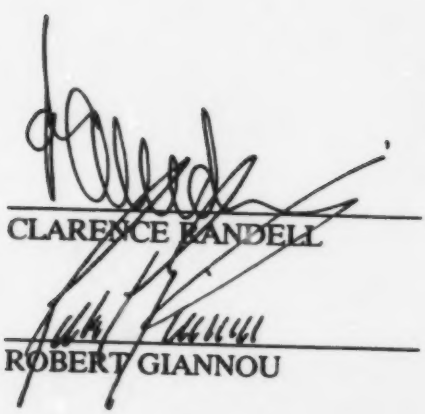
MAJORITY REPORT



CLARENCE RANDELL

ROBERT GIANNOU

FOREWORD

In December of 1990, we were invited to participate on a Statutory Committee to review Workers' Compensation. The mandate of our review was referred to us by the Provincial Cabinet. In carrying out this mandate we discussed a wide range of issues, some were broad in scope and concerned Workers' Compensation as an approach that protects the worker and the employer while others were specific in nature relating to program details.

All members share a strong conviction that Workers' Compensation is critical to all stakeholders in assisting those injured due to work-place accidents while providing insurance coverage to employers. It was evident during our deliberations that both these objectives are becoming more challenging as a result of the increasing pressures on industry, its labour force and the entire economy.

The two areas that were the main focus of our attention were related to the organizational structure and the Commission's financial position. About midway in this review, the Commission released its 1990 Annual Report highlighting the current financial crisis in which it finds itself and the Review Committee feels that the organization has lacked focus on these financial problems. Although the Board did present a Financial Strategy to our Committee, we feel that the Commission and its Boards have not paid appropriate attention to its financial position and the pending review may have stimulated some of the activities that have been introduced. It is imperative that efforts be made immediately to increase the accountability of the Commission to the stakeholders.

As Committee members we were acutely aware of the complexity of the issue and the time restrictions that were an inevitable part of this exercise. Our report contains 45 recommendations that we believe make a significant contribution to addressing many of the problems with Workers' Compensation today. A dissenting paper provides an alternative view and recommendations.

CLARENCE RANDELL

ROBERT GIANNOU

JAMES GILL

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A. INTRODUCTION

i. PREAMBLE

A Review Committee chaired by Mr. Clarence Randell, then Deputy Minister of Employment and Labour Relations, Mr James Gill, employee representative and Mr. Robert Giannou, employer representative, was formed in December of 1990. The Committee was established in response to MC 1533-'90 to conduct a review of Workers' Compensation in Newfoundland and Labrador as specified under section 114 of the Workers' Compensation Act. The Committee was asked to study and report to the Lieutenant Governor in Council on the financial aspects of the Commission, rehabilitation, industrial disease, accident prevention, the appeals process and policy and administrative issues.

In completing its review, the Committee held approximately 20 meetings and consulted with various stakeholders in the system by holding 15 days of public hearings throughout the Province in Clarenville, Marystown, St. Lawrence, St. John's, Corner Brook, Baie Verte, Grand Falls-Windsor, Gander, Goose Bay, Wabush and St. Anthony. A listing of the individuals, associations or businesses who presented briefs or made submissions during the Committee's hearings is included in the Appendix with 38 oral and 51 written briefs submitted for consideration.

The Committee received assistance from the Commission itself, who provided data and information as well as the statistics used in the development of the financial position. Other provincial jurisdictions provided information for comparison purposes while the Canadian Centre for Occupational Health and Safety provided advice on industrial disease. At the provincial level, the Advisory Council on Occupational Health and Safety and the Occupational Health and Safety Division of the Department of Employment and Labour Relations provided their input. The Department of Justice assisted with legal interpretations of relevant sections of the Workers' Compensation Act.

ii. BACKGROUND

Newfoundland's compensation system has its roots in the Ontario system which was created following a study in 1910 by Sir William Meredith who was mandated to review the liability of employers to compensate employees for injuries received in the course of employment. This study recommended that workers be compensated for work related injuries without fault, based on a system of collective liability funded by employers as a cost of business. It was further recommended that in delivering such benefits, an independent Commission be established to administer the system and ensure injured workers had claims handled without the requirement of financial resources for litigation. The system that was created was known as the Disability System. Previous to this, an injured worker was left to the costly legal system of common law tort to receive compensation as a result of a loss caused by a work related injury with disadvantages for both the employer and the employee with such a system.

In Newfoundland the main principle of the Disability System was to compensate injured workers based on the level of disability sustained. The compensation was based on 75% of gross income and the degree of disability as determined by a disability table to a maximum of $21,000. This system had many inequities, however, it remained in existence in all provincial jurisdictions as the basic Workers' Compensation model until the mid 1970's, when many jurisdictions across the country began to question the system based on the fact that the concept of compensation was to provide for wage loss rather than based on the level of disability. In 1979, Saskatchewan was the first Province to introduce the Wage Loss System replacing the Disability System.

One of the problems with the Disability System was the inequities that existed among married and single claimants. An injured single worker with no dependents received more on compensation than did the married worker given that the tax deductions were not considered in determining compensation benefits. By introducing the system of wage loss, it ensured a more consistent relationship between the benefits and the workers take home pay. A married worker, for example, with a large number of dependents in a lower tax bracket than the single worker, received more in compensation under the wage loss approach than did the single worker with no dependents.

In Newfoundland it was thought that the Wage Loss method of compensation was the most modern and progressive and by its introduction in 1984, the Province would be ahead of most other Provinces. The Wage Loss System was designed to improve the system of benefits to claimants and increase the level of rehabilitation services available to claimants. Since then, several other jurisdictions in Canada have changed from the Disability System to the Wage Loss System and at present approximately half the country has implemented the Wage Loss System.

One of the terms of reference presented to the Committee was to review today's system of compensation, the Wage Loss approach, versus the previous Disability System. More particularly, the Committee was directed to review the objectives of the Wage Loss System with a view to determining whether or not its objectives have been addressed. After a search of all available information, it was noted that no specific objectives were established for the introduction of this system. It was for this reason that the Committee was unable to confirm or deny whether these objectives have been appropriately addressed. However, it should be noted that during the entire public hearing process, not a single concern on the Wage Loss System was presented, nor was there an advocation to return to the previous system of disability. Based on this and the fact that wage loss is more equitable in compensating injured workers for loss of income, the Committee is of the opinion that this system should be maintained.

The Newfoundland Wage Loss System compensates for payment of earnings lost and provides a lump sum award for partial or full disabilities. The compensation for payment of earnings lost is based on 90% of net income which served as a basis for benefits

calculation with net income derived by deducting from the employee's gross earnings, Federal and Provincial taxes, unemployment insurance and Canada Pension Plan premiums.. The maximum compensable ceiling was raised to $45,500 in 1983, the highest in the country, from the $21,000 ceiling used with the Disability System. As of January 1, 1991, this compensable ceiling was the third highest in the country.

Since the basis for the introduction of the Wage Loss System was equity, this system advocating the actual loss of earnings, regardless of the degree of physical impairment and the duration of the disability, appears to be the most desirable form of compensation. This fact was uncontested by all the stakeholders.

iii. GOALS AND OBJECTIVES

The basic goal of Workers' Compensation in this Province and throughout the entire country is that workers be compensated for work related injuries without fault. By enacting a system to ensure these provisions are available to workers, the common law rights of workers were taken away and replaced with statutory rights under the Workers' Compensation Act. With the introduction of an independent compensation system, the worker forfeits the right to take legal action against an employer and inherits the right to apply and receive compensation for the injury sustained. The worker receives benefits regardless of fault on the part of the employer or the worker. The system is, therefore, a system of insurance whereby coverage is compulsory and assessments are levied upon employers, who are collectively liable, and paid to workers injured as a result of employment. Although safety and accident prevention are not direct functions under Workers' Compensation, goals and objectives in this area are of paramount importance to the system. All groups, both employer and employee, should strive for a safe workplace free from injuries. By reaching this goal, employers would lessen the financial costs associated with Workers' Compensation and many employees would not suffer from the effects of a work-related injury. Therefore the ultimate aim of all stakeholders should be to achieve this goal.

It was with the understanding of this position and the goals of the system that the Committee undertook its review. It is the Committee's desire that the viability of the system be maintained guaranteeing that workers and employers alike not be forced to return to the costly system of common law tort or private insurance programs in the event of a work-related injury. For ease of reading the recommendations are formulated into three areas, organizational, financial and general recommendations.

iv. CURRENT STATUS

The Statutory Review Committee, as part of its mandate, reviewed all facets of the Workers' Compensation System from claims to its financial position. Early in the course of this review it was readily apparent that the Workers' Compensation in this Province had serious financial problems and that if this trend continues the organization will not be able

to operate from its cash flow. The 1990 statements show an operating loss of $29,914,708 and an unfunded liability of $112,759,398. Since this time the Committee received notification from the Board of Directors that its unfunded liability has increased further by an additional $15,000,000. In addition it was stressed by the Commission's financial officers that over the last six months, claims duration has increased markedly and has placed even further additional pressures on its financial position.

It was the position of the Commission that the dramatic increase in unfunded liability was a result of the lack of claims experience upon which to project future cost of programs and because the provision for indexing benefits was not recorded in the previous financial statements. It was also stated that the Wage Loss System introduced in 1984 is costly and that the requirements for future expenditures had not been accounted for. The Committee believes that there are several additional factors that have resulted in this current position including the lack of planning for the system of wage loss, delays within the Commission itself causing claims duration to increase, structural problems within the organization and the limited activities in the areas of accident prevention.

Given the lack of objectives during the implementation of the Wage Loss System, all Committee members believe that the Commission had not fully assessed the system's cost prior to its implementation. Although it has no evidence of the lack of adequate planning prior to the wage loss system, since 1984 there has been a considerable lack of effective research, planning and policy initiatives. The result of this is evident today in the $113 million unfunded liability. It is the opinion of the Committee that the existing financial position will further deteriorate and the Committee strongly suspects that the Commission will be in a severe cash shortage position in less than five years, whereby it will not have the funds to pay benefits to claimants if major changes are not introduced.

From the review of the financial information, the Committee also has serious concerns as to the ability to accurately forecast the Commission's future requirements or change policies and programs to overcome existing and future problems. The Committee was further disturbed by the fact that the unfunded liability was forecasted based on a continuation of these same practises. There is no doubt that a statutory review was certainly necessary at this time if only to address the funding and organizational concerns that should have been addressed years ago. The Committee believes after hearing those concerned, the Commission and the Division of Occupational Health and Safety are not adequately addressing the concerns of all stakeholders.

It has also been stated that external factors such as activities in accident prevention and education mandated to the Division of Occupational Health and Safety indirectly affect the Commission's financial position and if functioning more effectively would result in reduction in accidents. All parties agreed that the senior management and most importantly those who deliver services in accident prevention and education have a major role to play and should perform their duties with this rationale utmost in mind. It was recognized that

this Division is constrained by the limitations placed upon it by the Provincial Government and given the current financial constraints within Government has limited staffing and research efforts. The Committee recognizes that even one accident is too many and since the activities by this Division can increase the awareness of workers, employers and the general public on the benefits of proper safety and prevention practices, this group should become more active.

During the past year, several jurisdictions in Canada and the United States have given consideration to proposals to change their compensation systems to ensure its viability. These changes serve to highlight the concerns and limitations being experienced, not only in this Province, but in many jurisdictions in North America. **It should be noted that today's Workers' Compensation System of Wage Loss was designed to function in a full employment economy with an effective prevention program.** Given that the unemployment rate in this Province stood at 18.6% in July 1991, and that employment is seasonal in nature, there is no doubt that factors such as these have placed increasing pressures on the system.

Given the magnitude of the problems inherent in the system today and the constraints placed upon it, the Committee noted that the system must remain balanced and equitable for all represented. The approach taken during this review was one based on equitable distribution among all stakeholders while addressing the current state of the affairs both organizational and financial and with the Division of Occupational Health and Safety. The Committee recognizes that it is impossible to envisage a system without problems but through the recommendations contained herein has attempted to redirect the entire system.

B. ORGANIZATIONAL STRUCTURE RECOMMENDATIONS

Given the existing financial position of Workers' Compensation and the many concerns raised by stakeholders throughout the public hearing process, it is the Committee's view that a review of the delivery structure is crucial. In completing this, the Committee identified several key areas where significant and immediate changes are required and has made its recommendations to ensure that the organization functions more effectively and efficiently.

The information and recommendations contained in this section are listed by order of importance with the organizational structure, the Division of Occupational Health and Safety and compensation services being the three key areas that require immediate and major change. The net effect from the implementation of these recommendations will result in overall cost savings, reduction in claimant waiting periods, better services, increased accident prevention and awareness, and greater accountability by all stakeholders.

i. ORGANIZATIONAL STRUCTURE

With the increases in costs associated with Workers' Compensation, the Committee has made its recommendations to correct the many organizational problems from where it believes these problems have grown. The Committee believes that these recommendations are of outmost importance as those involved in the system must be first able to manage, prior to achieving substantial improvements. If this situation remains as it currently exists, then there is absolutely no doubt that Workers' Compensation will have no future. The two key issues addressed in this section include the composition of the Board of Directors and the structure of Workers' Compensation.

a. Composition of the Board of Directors

The policies and programs of the Commission are established by the Board of Directors with the daily management of the Commission being the responsibility of the Chief Executive Officer and the employees of the Commission. The Board is made up of eleven voting members including the chair, vice-chair, nine directors with equal representation from employees, employers and the general public. Two additional positions exist for the Chief Executive Officer and the Chair of the Workers' Compensation Appeals Tribunal who function as ex-officio non-voting members.

All members of the Board are appointed by the Lieutenant Governor in Council. Over the past several years employer and employee appointments have been filled through consultations with business and labour who made representation to government on possible appointments. The Committee believes that this process for Board appointments should

continue in its present manner. The Committee was however unable to determine the rationale for the public representatives on the Board as they are not direct stakeholders in the system. In addition, the position of vice-chair is discretionary and an option is a system of alternating vice chair responsibilities between employer and employee directors.

Concern was expressed by stakeholders on the limited two year appointment term of the Board of Directors as it is possible that all Directors are appointed concurrently, creating problems with continuity since Directors need to be well educated on the system of compensation. It was noted in 1990 that the Board held 43 meetings, that is approximately one per week and during these meetings issues other than the establishment and approval of policies and programs were discussed. For these reasons, the Committee proposes the following recommendation.

RECOMMENDATION

The Board of Directors meet on a regular monthly basis, with its function limited to that of policy, program planning and financial issues thereby distancing itself from the daily activities of the Commission. The size of the Board be reduced from twelve to seven members by eliminating the three positions of public representatives and that of vice-chair. Representation on the Board should include three members each from the employee and employer organizations, as well as an independent chair. To ensure continuity within the Board itself, it is recommended that Board members be appointed for a three year term with appointments staggered.

POTENTIAL RESULT

The recommendation is meant to streamline the Board while ensuring the Board guides the Commission over the long term, thereby providing consistency and continuity in policy formulation, reducing costs, and increasing efficiency while ensuring all stakeholders are represented.

The position of Chair should be independent and seen to be independent, therefore the ability to appoint should be retained by Government through the Lieutenant Governor in Council. Given the complexity of the system, government appointments to the Board should continue to be based on qualifications and ability and filled by those best able to understand the needs of employees and industry as well as the fiscal responsibilities of the system.

The Committee was asked to deliberate upon the merits of combining the position of Board Chairperson with that of Chief Executive Officer. As outlined in the Act under sections 4 and 6, the Commission is entitled, through appointment by Lieutenant-Governor in Council, to a full-time Chief Executive Officer and part-time Board Members including the Chairperson. The responsibilities of the Chief Executive Officer are to perform and implement the duties in accordance with the Act; while the Chairperson ensures that the Board administers the Act and establishes policies and programs consistent with this. Both employer and employee representatives expressed concern with combining these positions into one, mainly because those responsible for formulating and approving policy should not be directly involved in its implementation. The Committee was in general agreement with this rationale however believes that the Commission neither needs nor can afford two full-time senior executives.

RECOMMENDATION

It is, therefore recommended that the position of full-time Chief Executive Officer be appointed by the Board, subject to the approval of the Lieutenant Governor in Council and the part-time Chair be appointed by the Lieutenant Governor in Council.

POTENTIAL RESULT

The Chair will be accountable to the Board while the CEO will be accountable to the Board through the Chair.

It was noted that the Chief Executive Officer currently functions on the Board as an ex-officio member, as does the Chair of the Workers' Compensation Appeals Tribunal. The Committee reaffirms that these positions are vital to the functioning of the Commission and that those in these positions should serve on the Board in this capacity. Furthermore, given that the medical community provides constant service to injured workers, the Committee believes that they should become more active in the system.

RECOMMENDATION

It is, therefore recommended that Commission establish a Medical Advisory Committee through consultations with the Newfoundland Medical Association to advise the Board of Directors on issues related to medical policy.

POTENTIAL RESULT

This will ensure that the Board receives medical guidance on policy formulation and support from the medical profession.

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b. Structure

The delivery of compensation, the establishment, and collection of revenue is completed by six line departments, each with respective responsibilities. Three departments deal directly with client services including the Claims Department with responsibility for administering claims; Rehabilitation, with responsibility for administering rehabilitation; and Medical Services. Other departments include Financial Services, responsible for employer's assessment and collections; and Administration and Information Systems, who serve as support to the overall system. The total cost of this bureaucracy has been increasing over the last several years. In 1989 the administration costs totalled $9.8 million and in 1990 the costs increased by 8% to $10.6 million while claims decreased from 19,286 to 19,027. The Committee, while recognizing that costs may not be directly related to the number of claims rather than increase in services, believes the situation within the Commission can be improved.

For example, there were numerous concerns raised relating to waiting periods caused by the transfer of claims from the Claims Department to the Rehabilitation Department. As an example, when a claimant participates in rehabilitation, the case file is sent from the Claims Department to the Rehabilitation Department along with the responsibility for payment of benefits. In some cases, benefits have been delayed in transfer and upon investigation it becomes confusing as to the appropriate person to contact for information related to the claim.

There is no doubt that the delays in claims processing cause increases in compensation costs and in the length of time persons remain on claim. The Committee believes that these delays are partially a result of delays within the Commission. It was noted, for example, that there is considerable delay between the date of injury and the start of rehabilitation, on average 71 weeks before rehabilitation commences. Moreover, these

delays continue since 30% of the injured workers spend on average six weeks waiting after enroling in rehabilitation. The Committee believes that not all these delays are the result of external factors and that the Commission can do more to improve processing.

RECOMMENDATION

It is also recommended that responsibility for a claim remain with the Claims Department and be the responsibility of the claim's supervisor as long as the claim exists.

POTENTIAL RESULT

This will provide better services while ensuring that the duration of processing is improved.

RECOMMENDATION

The Committee recommends that the Commission begin immediately to restructure its organization intended at streamlining and making better use of its resources. This review should concentrate on reorganization along the functional lines presented in Chart 2 as can be compared with its existing organizational structure in Chart 1.

POTENTIAL RESULT

The claims duration will be reduced and measurable, providing for increased accountability within the Commission.

Chart 1

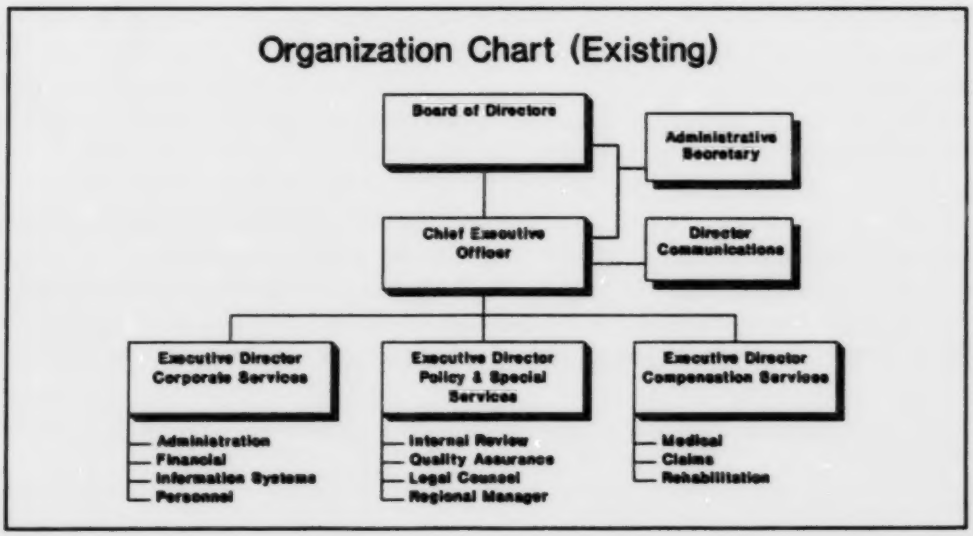
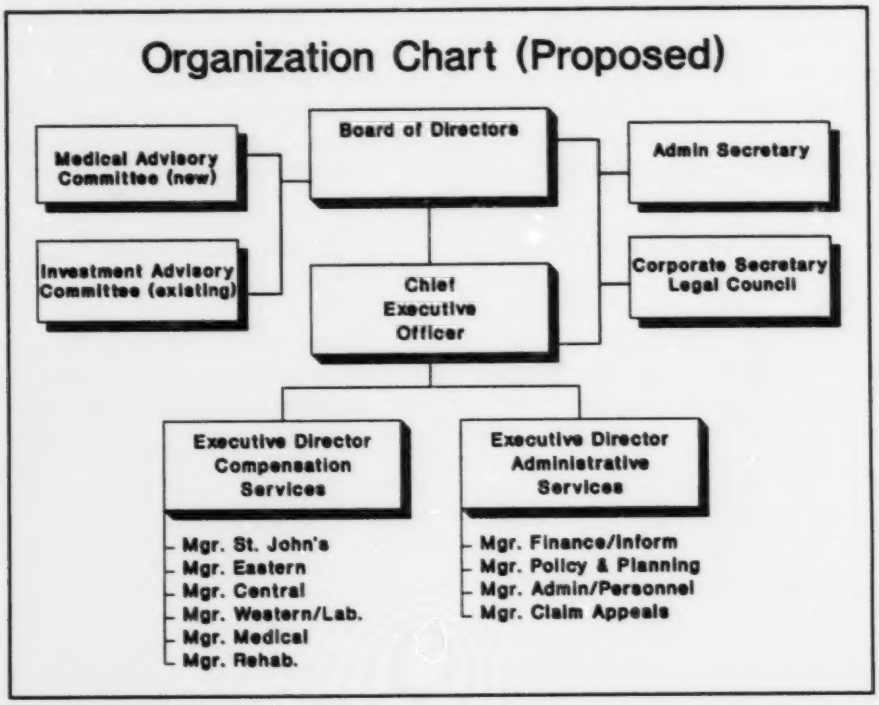


Chart 2



Although the Committee has not recommended that the Division of Occupational Health and Safety be transferred to Workers' Compensation, the two reasons for this decision are related to the regulatory role of Occupational Health and Safety and the current structural problems at the Commission. This does not mean, however, that Occupational Health and Safety does not play a major role in its responsibility to the Commission, rather, the Committee feels that the accountability of the Division, since it directly and indirectly affects accident rates and costs, should be to Workers' Compensation. Since there appears to be a considerable lack of communication and interaction between these structures, the Committee makes the following recommendation to alleviate such problems.

RECOMMENDATION

In the short term, it is recommended that the Assistant Deputy Minister of the Division of Occupational Health and Safety sit on the Board of Directors as an ex-officio member. The Committee also recommends that once there are noticeable improvements in the Workers' Compensation system and within two years from the date of this report, the issue of divisional transfer to Workers' Compensation should be reviewed as outlined in Chart 3.

POTENTIAL RESULT

The effect of this recommendation will ensure that the level of cooperation and effectiveness between Occupational Health and Safety and Workers' Compensation improves.

Chart 3

In 1990, the Commission employed 172 staff to deliver compensation services and collect the required assessment revenues. There is no doubt that the system of compensation is both complex and sophisticated as it requires financial management, claims administration, delivery services, medical and rehabilitation services and general administration. The vast majority of the Commission's staff, 92.4%, are located in St. John's with only 7.6% located in the regional offices in Corner Brook and Grand Falls. In terms of distribution of claims, however, 73% of claimants are living on the Avalon with the remaining 27%, disbursed across the Province (See Table 1).

Table 1
Provincial Distribution of Workers' Compensation Claims
as of May 21, 1991

Avalon	73.2%
Central	11.3%
Western	10.1%
Burin	3.5%
Labrador	2.0%
Total	100.1%

Notes:

1. Avalon includes the Avalon Peninsula and all points as far west as Clarenville including the Bonavista Peninsula.
2. Central includes all points west of Clarenville to Jackson's Arm.
3. Western includes all points west of Jackson's Arm.
4. Burin includes all points south of Clarenville including the Burin Peninsula.
5. Labrador includes all communities in Labrador.

Many of the concerns raised by injured workers outside the Avalon were in relation to the lack of access to Commission staff. Although the Commission currently has regional offices in Grand Falls and Corner Brook, their combined staff totals only fifteen and these offices have little or no decision making authority. The introduction of the toll-free telephone number has offered some relief to claimants but on many occasions the number is in use and the isolation and frustration increases.

RECOMMENDATION

It is recommended that the Commission offer an increased level of service to claimants by beginning immediately to regionalize services into regional offices in Clarenville and St. John's separating its regional office functions from its head office functions. In addition, it should offer an increased level of service in its existing regional offices in Central and Western Newfoundland including its existing Labrador sub-regional function. Regional accountability should include claims adjudication, rehabilitation, medical and internal appeals as outlined in Chart 4. During the transition to regional autonomy, it is expected that the staff compliment of the Commission not increase, rather implementation will be carried out through the use of existing staff. When the issue of the Occupational Health and Safety Division transfer to Workers' Compensation is reviewed, the regional office functions should be as outlined in Chart 5.

POTENTIAL RESULT

This will result in better services, reductions in waiting, duration, and overall costs while increasing the awareness of Commission staff to the regional workplace, labour markets, client groups, employee and employer representatives, social agencies, medical professionals, and educational resources.

Chart 4

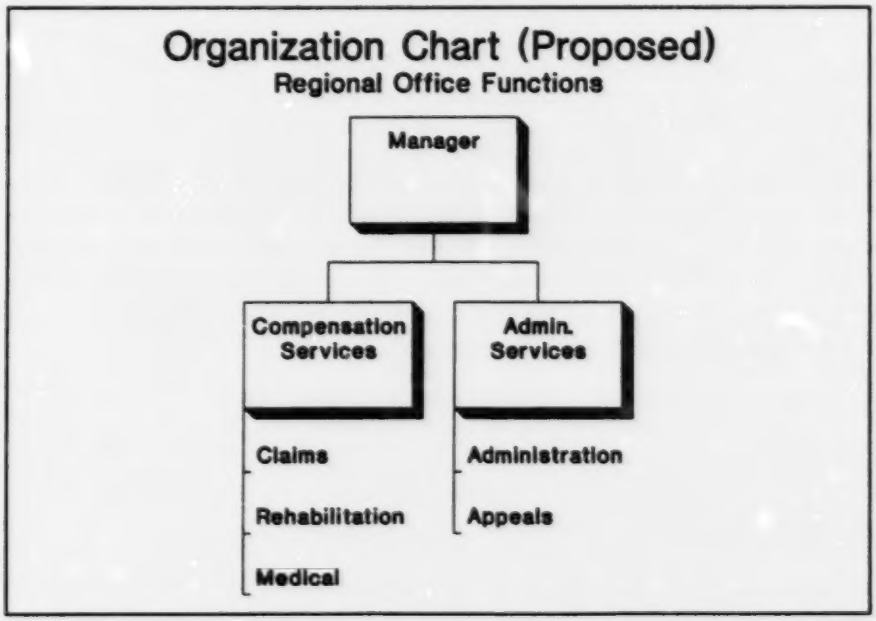
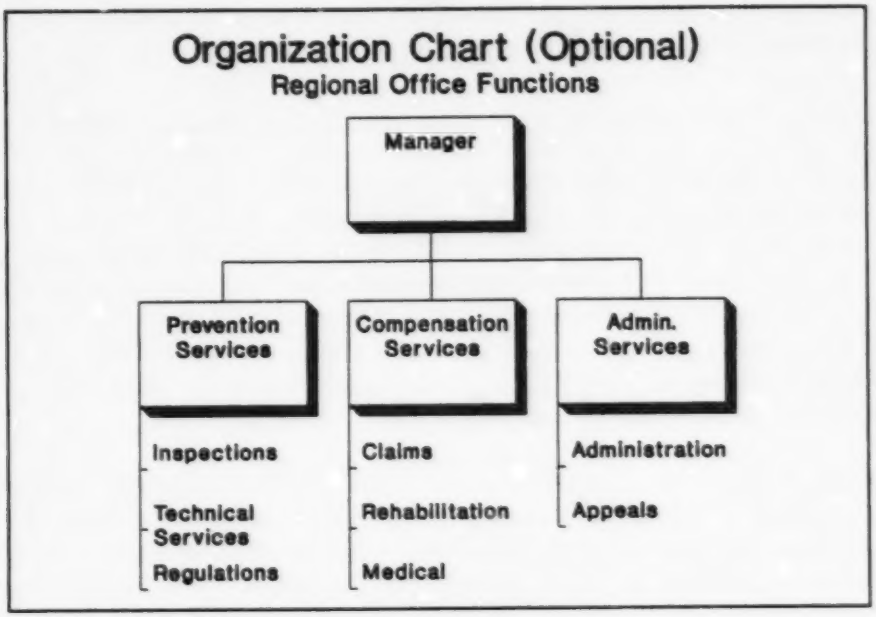


Chart 5



The Committee noted that the Commission and its Board require additional staff dedicated solely to the functions of policy, planning and research. For example the information required by the Board in policy development can be provided more efficiently by a group specifically mandated to policy, planning and research rather than continually drawing upon existing staff whose role is to provide services and collect revenues. This group should coordinate options for program and service improvements while providing guidance to the Board. A major component of its mandate will be to coordinate the development of a five year strategic plan for the Board outlining the future direction of the Commission.

RECOMMENDATION

It is recommended that the Commission undertake to increase the priority of its research, policy and planning functions and that a five year strategic plan be developed.

POTENTIAL RESULT

This will provide employers and employees with a sense of stability and knowledge on the future of Compensation.

Workers' Compensation has a system of appeals which allows dissatisfied workers or employers the option of appealing a claim's decision or classification. At present as outlined in Chart 6, three levels of appeals exist; the first by the Department who made the initial determination, the second by an internal structure mandated to the appeals function and the final level by the independent tribunal, Workers' Compensation Appeals Tribunal (WCAT). In 1990, 395 cases were reviewed at the first level of appeal with 75% reaffirming the initial decision, 149 at the second level with 52% reaffirming the initial decisions and 40 at WCAT with 27% reaffirming the initial decision.

Although the number of appeals is relatively low, as it represents only 2% of the 19,905 claims reported in 1990, the Committee heard numerous concerns about this function during its hearings. The greatest concern was at the first level of the appeal; many felt that since this appeal is completed by the Department who made the initial determination, a complete independent review is unlikely. The Committee is in agreement with these concerns and doubts whether this level of appeal is required.

RECOMMENDATION

It is, therefore recommended that the Commission eliminate the first level of appeal and implement the system as outlined in Chart 7.

POTENTIAL RESULT

This will result in a system of independent appeals, provide better services and reduce waiting periods.

Chart 6

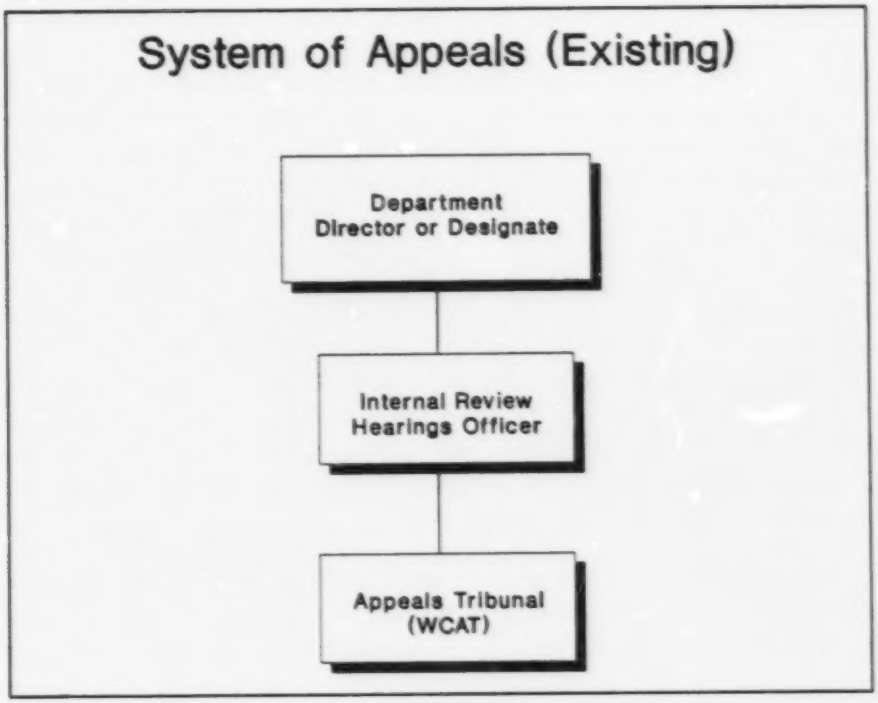
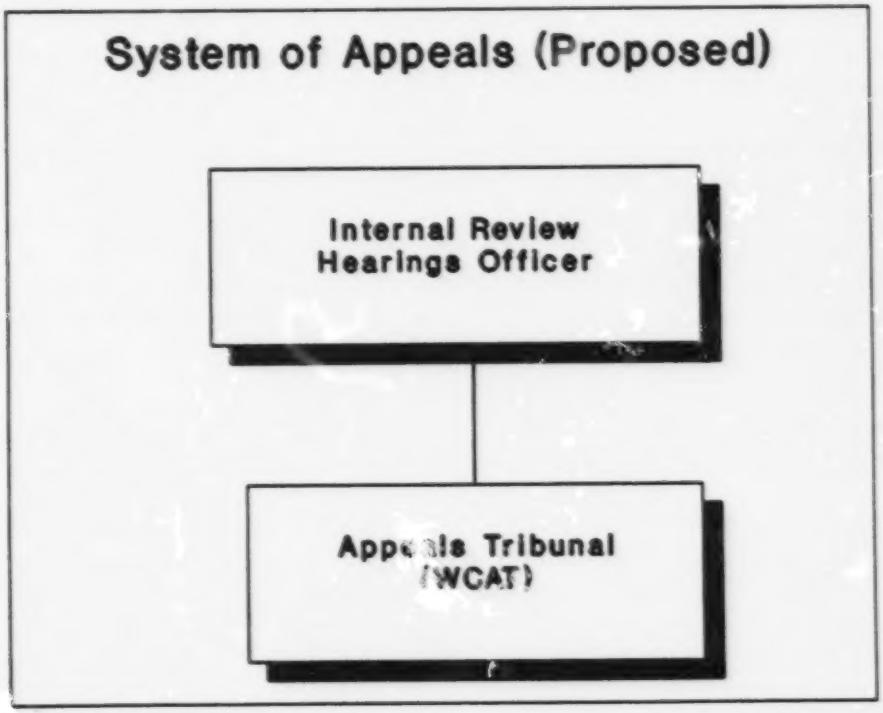


Chart 7



ii. PREVENTION

This Committee has placed extreme importance on prevention which is mandated to the Division of Occupational Health and Safety of the Department of Employment and Labour Relations. It has been recognized that the Division must be strengthened and reorganized so that it can assist all stakeholders more efficiently. A realignment of time, money and commitment to the efforts of accident prevention is absolutely necessary if elimination of the present pattern of simply waiting for accidents to happen is to be changed. The major goals of occupational heath and safety should be as outlined, with the recommendations in this section designed to reinstate these guiding goals through its structure, programs, education, training and enforcement. To accomplish these goals, the Division must maintain close liaison with its client groups, agencies and organizations such as Labour Canada and the Canadian Centre for Occupational Health and Safety but most importantly Workers' Compensation. The major goals should be to:

- develop closer working relationships with clients and their respective organizations, employers, workers, and unions remembering that Occupational Health and Safety is there to serve;

- develop programs, training and administrative procedures to ensure compliance with existing and future legislative requirements in close consultation with clients;

- facilitate appropriate and timely research into practical solutions for systematic programming; and

- strive to stay abreast of the latest developments in the occupational health and safety field.

Existing legislation requires that all workers receive comprehensive education and training into work hazards and that employers take appropriate measures to prevent accidents and illnesses. It appears that compliance with these requirements is almost non-existent and when in existence, compliance is inconsistent. Appropriate training programs and related materials must be developed immediately in conjunction with client groups to agreed provincial standards. It is the opinion of the Committee that additional education on prevention should be made available to the general public, including youth and students in both secondary and post-secondary.

RECOMMENDATION

The Committee recommends that the educational ability of the Division be strengthened on a province-wide basis such that it becomes more involved with the public, employees and industry in increasing programs, services, and awareness. To accomplish this additional funds need to be allocated to educational programming.

POTENTIAL RESULT

This will increase public awareness on the importance of safety and indirectly reducing the number of accidents and the associated Workers' Compensation costs.

In the areas of enforcement little can be said about past and present inspections as there is no history of a systematic approach to this aspect of Occupational Health and Safety as there was little initiated within the Department prior to the last six months. The Committee has been made aware by all parties that the Occupational Health and Safety (OHS) section has not fulfilled its mandate to the satisfaction of the stakeholders. Both employees and employers commented that they rarely receive visits from OHS staff and when it occurs it is usually initiated from concerns raised by union representatives or by special arrangements between an employer and the Division. A shortage of staff, lack of staff with necessary qualifications and insufficient policy direction may be largely to blame for this. Staffing resources must be committed and policies formulated to initiate a systematic inspection schedule that brings a regular and supportive regulatory presence to the workplace.

RECOMMENDATION

It is recommended that the Division be supported by appropriate technical staff with expertise in occupational medicine, industrial hygiene, ergonomics, engineering and other disciplines as necessary, to administer statutes, regulations and to offer assistance to occupational health and safety committees and client groups. To ensure these programs and services are delivered in a timely and effective manner, the following must happen:

- **the special reserve fund set up for the purpose of research and special studies, which should be set at one million dollars, be immediately freed up and**
- **the provincial government hiring freeze that applies to the Occupational Health and Safely Division be immediately removed to enable it to meet its staffing needs.**

POTENTIAL RESULT

This should ensure that the Division has an adequate level of staffing to fulfil its mandate in accident prevention and that staff have the necessary training to carry out their duties.

According to legislation joint Occupational Health and Safety Committees are the primary vehicle for compliance with appropriate health and safety standards. No reasonable number of inspectors could ever expect to meet the capacity of these committees. With the rights and powers ascribed to them, joint occupational health and safety committees are capable of identifying areas that lead to a reduction in the number and severity of accidents. Unfortunately many workplaces do not have committees or the committees are functioning at less than adequate levels.

RECOMMENDATION

It is recommended that regionally, inspectors must, without delay, survey the workplace in their assignments, initiate actions and provide assistance to ensure that an optimum level of committee activity is reached in the shortest possible time.

POTENTIAL RESULT

These committees will function more effectively and increase the level of awareness on the importance of proper accident prevention.

It is obvious from reviewing the changes in the injury statistics that the nature of injuries are also changing. With the growth in employment in the service sector, the changes in technology incorporated into the workplace, and the introduction of ergonomics, the types of injuries are different than ten years ago. Injuries, for example, that were related to primary industries have, in most cases, declined as occurred with fishing and mining perhaps due to the reduction in economic activity or perhaps a result of industrial activity designed to reduce accidents by committing resources to prevention and education. These companies, such as some major employers in mining and forestry, should be commended for their efforts. Without this pro-active intervention, the level of unfunded liability would be worse that exists today. It is due to the efforts of companies such as these that the Committee is of the opinion that industries with improved accident records should be awarded due recognition through experience rating.

RECOMMENDATION

It is recommended that the Division become active in an audit procedure that verifies that the workplace Occupational Health and Safety Committee has supported an employer in its application for merit under experience rating.

POTENTIAL RESULT

This will ensure that those receiving merit under the system of experience rating do so with the approval of workplace committees composed of employees and management.

In 1988 earnings loss claims totalled 9,967 and rose to 10,404 by 1990 mostly a result of the yearly increases in claims relating to the sales and service class. An additional 905 injuries occurred in this class due largely to increases in injuries in hotels, hospitals and

nursing homes where sprains and strains are increasing. One startling statistic was the increase in sprains and strains since 1980 for all classes which rose from 1,933 to 4,540 in 1989. Given these increases, there is no doubt that efforts for both recovery time and prevention is paramount. On the prevention side, the recently completed Back Care Prevention Program, a joint project with hospitals, nursing homes and the Occupational Health and Safety Division is a positive sign that activities are ongoing, however, sprains and strains are occurring, not only in the health sector but, in all industry classes.

RECOMMENDATION

The Committee is recommending that the Occupational Health and Safety Division become more proactive in providing information and activities relating to proper sprain and strain prevention.

POTENTIAL RESULT

This will result in increased education on proper back care and result in less related injuries.

Many unions and employers approach health and safety problems not only on a workplace basis but rather by the total sector ie. forestry, mining, health care and fishing. The Division should join in these efforts with the possibility of a formulated approach to setting standards and compliance assurance. It was noted during this review that while there is a clear and demonstrated need for research into work activities particularly in the fisheries and offshore developments, little is being done.

The Advisory Council on Occupational Health and Safety, while being funded by the Commission, advises the Minister of Employment and Labour Relations on matters related to Occupational Health and Safety. At present this Committee has a total of twenty members, six from employees, six from industry, three public representatives, chair and co-chair, two ex-officio members and a committee secretary. The Committee was unable to determine the rationale for the public representation and the vice-chair and therefore makes the following recommendation:

RECOMMENDATION

It is recommended that the membership on the Advisory Council on Occupational Health and Safety be reduced to seven representatives with an independent Chair and three representatives each from employer and employee organizations. The two ex-officio representatives will remain on the Council.

POTENTIAL RESULT

This will ensure stakeholders are represented and will keep costs at a minimum.

iii. COMPENSATION SERVICES

For the purposes of this review and for ease of reading, the Committee has divided compensation services into the two headings of medical and rehabilitation as they currently provide services to claimants. Once the recommendations contained herein are implemented, the system of services will become holistic whereby the claims administrator will be responsible for the claim as long as a person remains on compensation. These departments will then act in a consultative manner rather than as administrators of claims.

a. Medical

The Committee heard numerous complaints about the internal and external medical services available to claimants. Internally, the Commission employs three doctors who provide direct medical advise to staff and examine an injured worker when required. Externally, the Commission compensates the general practitioners, specialists, hospitals and other medical professionals for the services provided.

The increase in the average duration of a claim is caused by many factors; the increased pressure on the health care system has slowed medical treatment, the Commission itself may be taking longer to process claims and employers, in particular those in the health sector, require employees to be fully recovered before allowing them to return to pre-injury employment rather than easing them back to work. There may also be those in the medical profession who feel that patients should be off longer, for whatever reasons, than the average required recovery period.

It was noted by many that increased duration is directly related to the lack of medical specialists and it is doubtful that improvements will come in the immediate future. The Committee recognizes that there is no single approach or recommendation that provides prompt access to medical treatment however if a multitude of changes are introduced simultaneously, the system of compensation will function more effectively.

RECOMMENDATION

The Committee is recommending that Government should immediately proclaim the chiropractic legislation and that the Commission pursue more actively with health care providers, initiatives such as priority access and early referral to specialists, especially orthopaedic.

POTENTIAL RESULT

This should ensure prompt access to medical treatment and enable the Commission to avail of chiropractic services.

Generally, the majority of the workers receive minor medical treatment and return to work in a short time, however, as noted previously, the recovery time for all injuries is increasing. A great majority of medical costs are related to the longer-term claims for those who require special medical assessments and treatments. One claimant listed 20 physicians or specialists visited in two years since the injury, the total cost reaching $250,000. The concern raised was that the medical profession continued to refer the patient to other doctors or specialists without a thorough examination or without referring to the results from a previous examination.

RECOMMENDATION

It is recommended that Workers' Compensation consult with the medical community on the possibility of establishing programs that will increase the dialogue between the local medical profession and the Commission staff. This will be facilitated by the increased autonomy at the regional Workers' Compensation offices.

POTENTIAL RESULT

This will increase communication among the local medical community and Workers' Compensation staff thereby resulting in better claims management and closer attention to the medical needs of the patient.

During discussions with the Commission it was noted that the majority of the claims processed by the Commission are referred to the Medical Department by the claim's adjudicator for their recommendation and comment. On average this means that approximately 10,000 files are reviewed each year by the three doctors employed by the Commission. The majority of these cases are simplistic in nature and only require the medical opinion of the attending physician. The adjudicators should make the decisions in these cases and only refer difficult cases to the internal medical doctors.

RECOMMENDATION

It is recommended that the number of cases referred to the Medical Department be kept at a minimum. Claim adjudicators will require considerable training to have a better understanding of the claim and its normal injury recovery period and will make the majority of decisions regarding claim's acceptance.

POTENTIAL RESULT

If these procedures are followed, the internal doctors will have more time for complicated cases. Since the claim's adjudicator will make the decision without consultation with the Medical Department, the length of time to process a claim will decrease.

RECOMMENDATION

It is also recommended that in consultation with the medical community, the Commission should implement a system of measurement on average injury duration so that the Commission can investigate immediately the rationale for additional recovery time.

POTENTIAL RESULT

It is the Committee's view that if these checks and balances are implemented, those responsible, that is the doctor, the worker, the employer and the Commission will be active participants in returning the worker to employment. By using this team approach, the awareness and participation by all involved will increase.

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b. Rehabilitation

Rehabilitation services have been offered in this Province since 1968 and with the wage loss system the mandate of rehabilitation is to assist in resolving employment problems as is legislated under sections 76 and 77 of the Compensation Act. Concerns were raised during consultations on rehabilitation services ranging from waiting periods, lateness of benefits, lack of attention and services, inadequate labour market information on training programs and unawareness of employment opportunities in local communities. Many concerns were on the training programs that offer limited or no employment opportunities. One example was related to graduate nurses from a registered nursing program currently enroled in the nursing degree program offered at the university which is intended to provide employment options in hospital administration. Unfortunately in many cases these employment options are nonexistent. It was obvious from discussions with stakeholders that more effort is necessary in career development and counselling. Given the dynamics of the labour market, an option is to place more emphasis on community involvement facilitated by the establishment of regional services.

The main purpose of rehabilitation is to assist the worker in re-entering the workforce through the development of new skills, while ensuring earnings capacity remain comparable to pre-injury employment. Assistance can be formal training, job search, ease back to work, transitional, re-employment assistance, modified work, assessment and on-the-job training. Early commencement of rehabilitation is the key to the program's success, however, the results indicate that the majority of the claimants did not enter rehabilitation until one year after the injury. Again it is recognized that the reasons may be medical in nature, however, the Committee believes that the Commission can do more.

RECOMMENDATION

It is the opinion of the Committee that where workers are medically able, rehabilitation should commence immediately.

POTENTIAL RESULT

This will ensure that workers have every opportunity to return successfully to the workforce.

RECOMMENDATION

It is recommended that the duties of the Workers' Compensation rehabilitation workers be advisory to claims and involve the principles of early and continued intervention, regional in nature, with rehabilitation decisions made through consultation with employers, employees, unions, medical profession, federal and provincial governments, and others involved in the regional labour market.

POTENTIAL RESULT

This will result in the use of rehabilitation programs that offer the greatest opportunity of employment.

It was also noted that claimants use multiple rehabilitation programs, some as many as eight, with a direct relationship between costs and program usage. At the end of 1989 it was found that 14% of the claimants enroled in four or more rehabilitation programs as outlined in Table 2 and generated over 40% of the rehabilitation costs.

Table 2
Distribution of Rehabilitation Program Usage Costs from 1985 - 1989

# of Programs Used	# of Claimants	Total Cost Millions	Average Cost ($)
1	730	$ 2.60	3,562
2	505	$ 3.96	7,842
3	275	$ 4.03	14,655
4	142	$ 3.40	23,944
5	71	$ 2.37	33,380
6	26	$ 1.07	41,154
7	7	$ 0.27	38,571
8	5	$ 0.30	60,000
Totals	1,761	$18.0	10,222

Note: Costs include benefits, training, etc.

RECOMMENDATION

It is, therefore recommended that a cap be placed on the number of rehabilitation programs with participation minimized and normally not to exceed two.

POTENTIAL RESULT

This will ensure that workers are directed into the appropriate programs immediately thereby providing better services and reducing costs.

In looking at the participation rate in programs it was noted that participation in the Ease Back to Work and Modified Work Programs was low. The view of this Committee is that these approaches to rehabilitation deserve far greater attention since the chances of a successful transition to work are greater than with job search programs. It has been stated that many employers are not ready or willing to participate in Ease Back or Modified Work

Programs however since employers efforts in rehabilitation will be considered in setting assessment rates under experience rating, participation should increase.

RECOMMENDATION

The committee recommends that employers be required to participate in ease back and modified work programs when deemed appropriate by the Commission who should review the workplace to ensure the needs of the employees are met.

POTENTIAL RESULT

This will ensure that workers are able to return to work quicker.

The Committee heard numerous complaints about the treatment received through the multi-disciplinary assessment program established at the Miller Centre for the Commission. This program is designed to provide the Commission with psychological, educational and medical information on the abilities of the injured worker at a cost of $4,000 - $6,000 per patient in addition to transportation, meals and accommodations necessary to avail of these services in St. John's. From the concerns expressed, the Committee was unable to rationalize why these services are not used by the Commission at a regional level.

RECOMMENDATION

It is recommended that the Commission cease to use the Multi-Disciplinary Assessment Program solely at the Miller Centre and begin to avail of these services at a regional level if available.

POTENTIAL RESULT

This will ease delays while utilizing regional resources and eliminate the stress felt by workers.

The issue of pregnancy in relation to rehabilitation was also raised during the consultations. It was noted that at present if the expected date of delivery and maternity leave makes it impractical to begin or continue an educational program, Workers' Compensation benefits are suspended. The Committee is in disagreement with this practice.

RECOMMENDATION

It is recommended that the Commission review its policy on pregnancy and rehabilitation to allow for flexibility in dealing with clients who are pregnant.

POTENTIAL RESULT

This will ensure that all claimants are given equal access to rehabilitation.

C. FINANCIAL RECOMMENDATIONS

The Committee has been constantly aware of the financial position of all parties involved in Workers' Compensation: businesses, employees and government. The Commission's financial position was the single most important feature of this review and as indicated in the introduction, the Review Committee was asked to address the problems of funding the Wage Loss System.

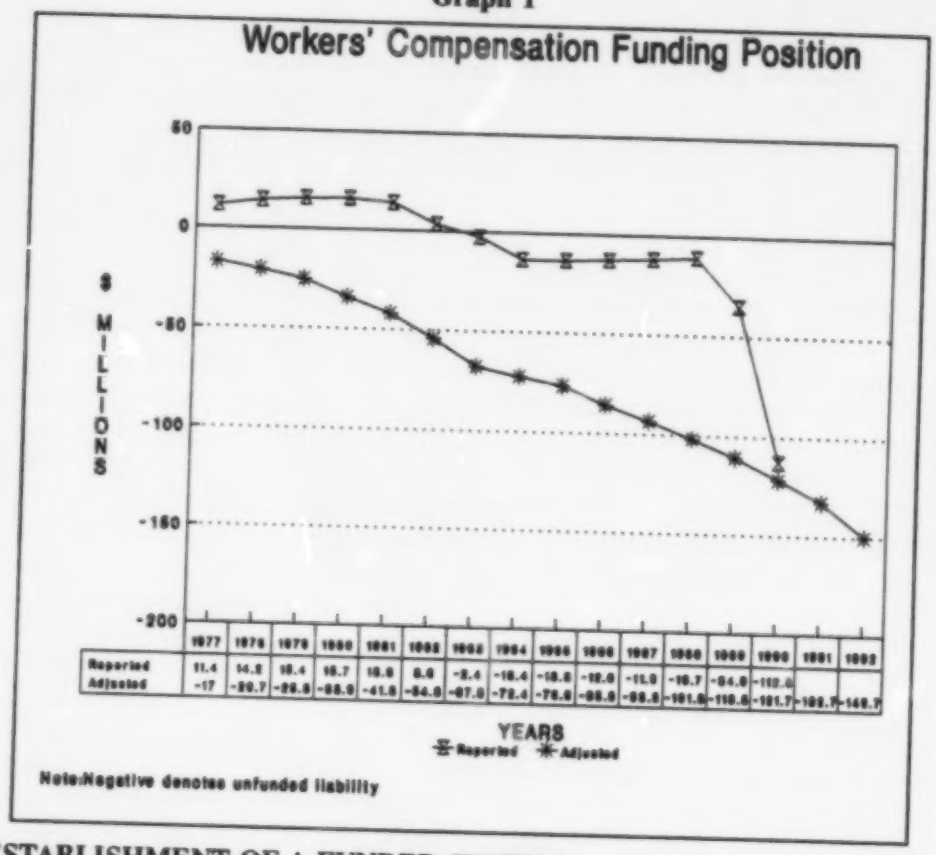
During this review the collective concerns expressed by all submitting parties, including both the employee and employer groups, were related to the substantial increase in the unfunded liability and accumulated deficit reported by the Commission. Employers were concerned with the increasing burden of assessments levied on the business community over the last several years while workers were concerned with the long term viability of this system in providing benefits to injured workers. All parties were equally sympathetic to the concerns of the other and without a doubt there was unanimous consensus with regards to preserving this system and its fundamental principle of compensation to an injured worker. The following section is divided into three sections including the Commission's current financial position, the establishment of a funded system and benefits.

i. CURRENT FINANCIAL POSITION

Over the last several years the level of unfunded liability, as illustrated in the Graph 1, has increased eight fold from $13 million in 1986 to $113 million in 1990. In 1984, the Commission implemented the Wage Loss System to replace the Disability System and in doing so many claims prior to 1984 were converted to wage loss. In representing the financial effects of these changes, the adjusted financial position of the Commission is also shown in Graph 1 and as illustrated, its funding position has actually deteriorated substantially in each year since 1977. The reason for the major change in the reported 1990 financial position is the result of recent actuarial studies which suggested that the Commission change accounting policies to reflect this position. In understanding the financial position, the Committee reviewed the major reasons for these increases including:

- increased duration of claim;
- higher health care costs;
- delays in obtaining medical assistance;
- several rate groups such as hospitals and nursing homes are not paying their respective share of Workers' Compensations costs;
- indexing benefits;
- increases in the cost of the Commission;
- increases in delays at the Commission in processing of claims; and
- low economic activity in the Province, resulting in high unemployment and limited alternative employment for injured workers.

Graph 1

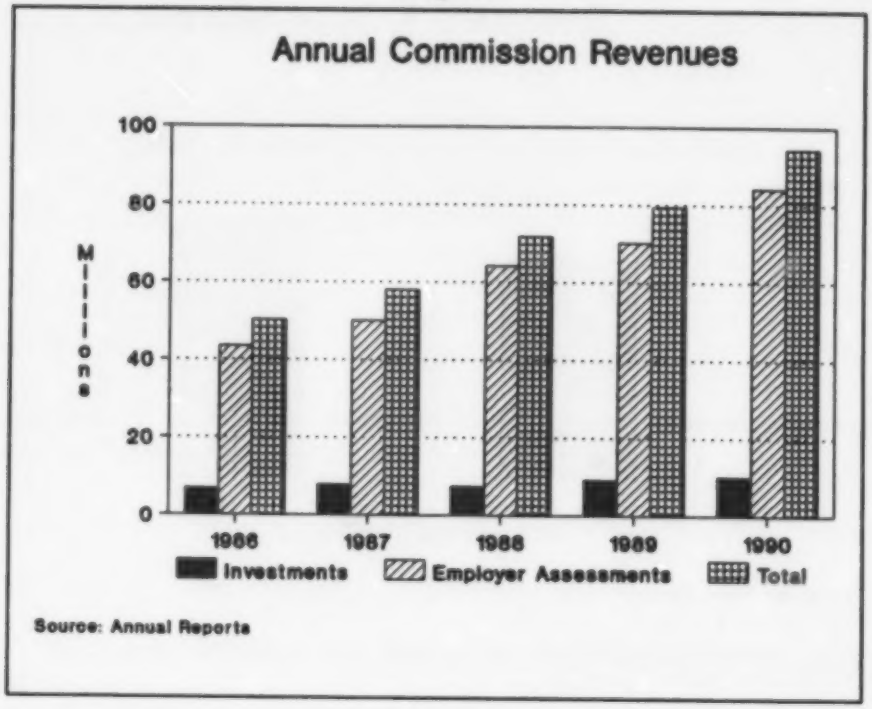


ii. ESTABLISHMENT OF A FUNDED SYSTEM

Workers' Compensation is funded exclusively by employers through assessments levied upon them by Workers' Compensation who collect these assessments for disbursement of benefits to injured workers. The Commission also generates investment income through its investment portfolio. As of 1990, the employer's contributions constituted approximately 89% of the Commission's revenue while investment income represented 11%. **In recent years, the employer contributions to the fund have increased dramatically and in fact have increased by 100% in five years, an average of 20% per year.**

The increase in assessment rates over the last five years has placed an added financial burden on the viability of businesses in this Province and this, coupled with the fact that the assessment rates are the second highest in Canada and the highest in the Atlantic Provinces, may impact upon business growth in the Province.

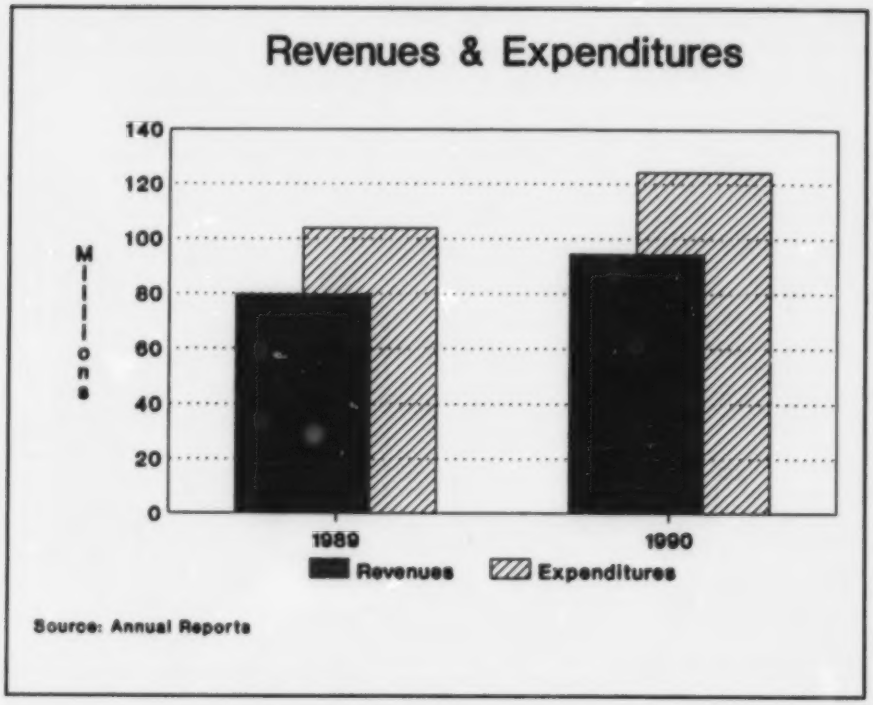
Graph 2



a. Assessment Rates

It has been suggested that the burden of the unfunded liability rests solely with the employers of this Province given that the assessment rates over the last several years have not been high enough to cover the ongoing costs of compensation. (See Graph 3)

Graph 3



However given the increases in provincial bankruptcies, high levels of unemployment, and the overall state of the provincial economy, it is the opinion of the Committee that the burden of eliminating this unfunded liability cannot be shifted in totality to industry and eliminated over a short-term. However to ensure that the existing liability is addressed, additional revenues have to be collected regularly to ensure the viability of the injury fund.

RECOMMENDATION

The Committee, while recognizing the current fiscal constraints on employers, is nevertheless recommending that additional surcharges be placed on employers over a 20 year period to eliminate the current unfunded liability. The rate of surcharge will be dependent first on a revised level of unfunded liability but should be set at 7.5% annually over the initial three to five year period subject to further review after this time.

POTENTIAL RESULT

This recommendation will generate approximately $6.6 million annually with an estimated annual employer assessment of $88 million.

It was noted that employers are pre-billed for their annual assessments on the first of January for the coming year based on the previous year's payroll with payment required on the first of April prior to interest charges. Many groups expressed concern with this as in most cases employers pay Workers' Compensation coverage in advance.

RECOMMENDATION

It is recommended that the Commission implement a system of collecting Workers' Compensation assessments on a quarterly basis.

POTENTIAL RESULT

This will allow employers flexibility in remitting Workers' Compensation assessments.

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b. Classifications

The setting of employer assessment rates is based on the classification in which employers are grouped. At present there are approximately 12,000 firms classified into seven industry sectors and further subdivided into 88 rate groups. As outlined in the 1990 actuarial study completed for the Commission, the majority of the firms are accounted for in few rating groups with 87% of employers in 30% of the rating groups. The major concern with this system is the number of firms in rate groups with low credibility and the resulting inequities that develop in the rate setting process and this fact is recognized by the Commission.

RECOMMENDATION

The Committee recommends that the Commission begin immediately to reduce the number of rate groups by amalgamating groups with similar claim cost ratios. It is also recommended that the Commission establish distinct rates for rate groups and examine the option of setting a minimum rate.

POTENTIAL RESULT

This recommendation should provide a system that is simpler to administer.

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c. Pre-funding of Limited Life Projects

In the past, the level of industrial activity in a rate group has varied significantly particularly if a project within that group has a limited life span. In this case it is possible that the employer, in the initial years, pays the assessment rates based upon the historical costs of others in that group. It is also likely that once a project of limited life is completed, the accident costs of this employer will be passed along to employers with longer term commitments. To eliminate these inequities, the Committee is making the following recommendation.

RECOMMENDATION

The Commission begin immediately to implement a system of pre-funding of limited life projects. An option could include projects of one to five years in duration at an aggregate cost of two billion dollars or more.

POTENTIAL RESULT

This will ensure that assessment rates in all rate groups are equitable over the longer term and that long-term employers do not bear the cost of those established for limited duration.

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d. Experience Rating

Experience rating is a system whereby employers receive adjustments to their assessment rates based on a comparison of companies in the same rate group. Any reductions granted to an employer with better than average experience (merit) would be offset by increases (demerit) to employers with worse experiences. To date, the Commission has implemented this system as a pilot in hospitals, nursing homes, and personal care homes. The Workers' Compensation Act currently has provisions for a merit system under section 84 which states that:

(1) The Commission shall adopt a system of merit-demerit rating to determine the assessment rate of an employer in each class or subclass.

(2) The Commission shall, in establishing the merit-demerit assessment rate applicable to an employer in each class or subclass, consider the rehabilitation efforts made by the employer.

The objective of such a system is to improve equity in the distribution of costs among participating employers and increase awareness of the consequences of work injuries. It is the view of the Committee that in determining employer experience ratings, incentives or disincentives can be given for actions such as accident prevention programs or lack thereof, reduction/increases in accidents and efforts in rehabilitation.

The majority of the employers who presented briefs to the Committee asked that experience rating be considered in the rate setting process. Employees were concerned that employers, in trying to obtain this incentive, would keep injured workers on the job rather than placing them on compensation thereby keeping their experience rating above industry levels. Given that employers are currently rated on a "preferred rating system" that is according to the costs of injuries in their rate class, evidence of this type of activity was not readily apparent to the Committee. The Commission currently sets rates by distributing the total claim costs between employers who are in industry classes of similar characteristics. And as expected, the injury costs vary depending on the type of industry as do assessment rates. The most obvious example is in the fishery offshore sector where assessment rates are set at $13.75 per $100 of payroll while those in retail and wholesale pay $0.83 per $100

of payroll. The reason for this sizeable variance in assessments is due to the frequency and severity of accidents on offshore trawlers versus the retail sector.

Some would argue that the merit-demerit system based solely on accident experience will create inequities against safety conscious employers who comply with provincial safety legislation but still suffer from a costly accident. The committee recognizes that compensable accidents occur at times through no fault of the employer. It has also been said that experience rating creates inequities for the employer with poor safety compliance who manages to avoid an accident based on luck. It was the opinion of the Committee that these inequities can be avoided with greater cooperation between the Occupational Health and Safety Branch of the Department of Employment and Labour Relations and the Workplace Occupational Health and Safety Committees.

It was interesting to note that the majority of the businesses in Newfoundland are relatively small with payrolls of $250,000 or less. In 1989, of the approximately 12,000 firms contributing to Workers' Compensation, 86.7% had payrolls of less than $250,000 while only 3.5% had payrolls valued at $1 million or more as illustrated in Table 3. It also followed that the larger firms provided the majority of earnings to workers; of the total provincial wages in 1989, 63.8% were paid by the 3.5% of employers with payrolls greater than or equal to one million dollars.

Table 3
Percentage Distribution of Active Employers by Payroll Size - 1989

Payroll Size($)	Employers as % of Total	Payrolls as % of Total	Injury Cost as % of Total
0 to 249,999	86.7	18.5	18.6
250,000 to 999,999	9.8	17.7	18.4
1,000,000 to 4,999,999	2.9	22.7	24.5
5,000,000 and OVER	0.6	41.1	38.5
TOTAL	100.0	100.0	100.0

If experience rating was implemented globally for all companies, a single accident for small companies could place this employer in a demerit position for many years, increasing the financial burden and seriously undermining the system of compensation known as collective liability. It was agreed by all concerned that experience rating for these employers

would be counterproductive and from an administrative view, would be extremely costly. The Committee agrees that the efforts of larger employer groups in accident prevention should be considered in the rate setting process also but is convinced that employees should play a role in prevention.

The Commission has recommended that experience rating be implemented requiring, prior to implementation, a two year pilot program where employers will be notified of annual assessment rates with experience rating, however, no actual merits or demerits will apply to the assessment rates, allowing for adequate time for company improvements in occupational health and safety. In order to participate, active employers with total assessments over three years of $3,000 or more would be eligible. The calculations of merit/demerit would be based on the following:

- an employer's actual claim cost for a three year-base period is divided by the employer's total assessable payroll;
- a comparison is made between an employer's deviation from that of the rate group in which the company is classified;
- for each 4% deviation, either better or worse from the rate group rating, the merit or demerit will move 1% to a maximum of 20%;
- consolidate rate classes; and
- three groups be excluded, namely volunteer firefighters, inshore fishermen and wood loggers.

RECOMMENDATION

It is recommended that the system of experience rating, as put forth by the Commission, be implemented however an employer's efforts in rehabilitation are to be included in this process. For an employer to apply and receive a merit under this system, it must have the support of the Workplace Occupational Health and Safety Committee subject to verification by an audit procedure conducted by the Division of Occupational Health and Safety.

POTENTIAL RESULT

This recommendation would in essence be revenue/expense neutral but would encourage the larger employers to be more active in accident prevention.

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e. Reserve Funds

The Commission has also established several reserve funds that are available for use in the event of a disaster for special studies, enhanced disabilities, etc. At the end of 1990, the reserve funds totalled approximately $16 million, ten million of which is controlled by the Commission to be used in the event of a disaster, while five million is available for use by the Division of Occupational Health and Safety as per their Act for special studies that may be required. Given the increase in the deficit over the last several years, the Committee believes that this level of reserves may be better served to offset the unfunded liability.

RECOMMENDATION

It is recommended that the Commission enter into consultations with an insurance company on the costs of nine million dollars of disaster insurance and assuming this option is favourable, the ten million dollars disaster reserve be reduced to $1 million and any surplus used to offset the unfunded liability.

POTENTIAL RESULT

This will reduce the reserves of the Commission as well as reduce the unfunded liability.

RECOMMENDATION

It is further recommended that the reserve for Occupational Health and Safety be reduced to one million dollars and the surplus used to offset the unfunded liability. This will require a legislative amendment to the Occupational Health and Safety Act.

POTENTIAL RESULT

This will reduce the reserves of the Commission as well as reduce the unfunded liability.

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iii. BENEFITS

a. Benefit Rate

Over the last several years the actual expenditures for claims have been rising dramatically, in fact expenditures for claims have increased by 100% in just five years, from $49 million in 1987 to $99 million in 1991. For example, expenditures on temporary earnings lost (TEL), rehabilitation and extended earnings loss (EEL) have almost doubled in the last several years. The reasons for these increases in cost include:

- increasing duration of claims;
- higher health care delivery costs;
- delays in obtaining medical assistance;
- indexing benefits;
- increases in the cost of rehabilitation; and
- claim delays within the Commission.

Graph 4 illustrates the increasing costs over the last four years. As indicated, TEL has grown by 82%, medical aid by 51%, rehabilitation by 105% and EEL by 679%. As a result, the overall cost has grown by 72% while the number of claims has remained relatively constant (See Table 4). Over the same period the amount of revenues have increased by 63% comparable to the increases in accident costs.

Graph 4

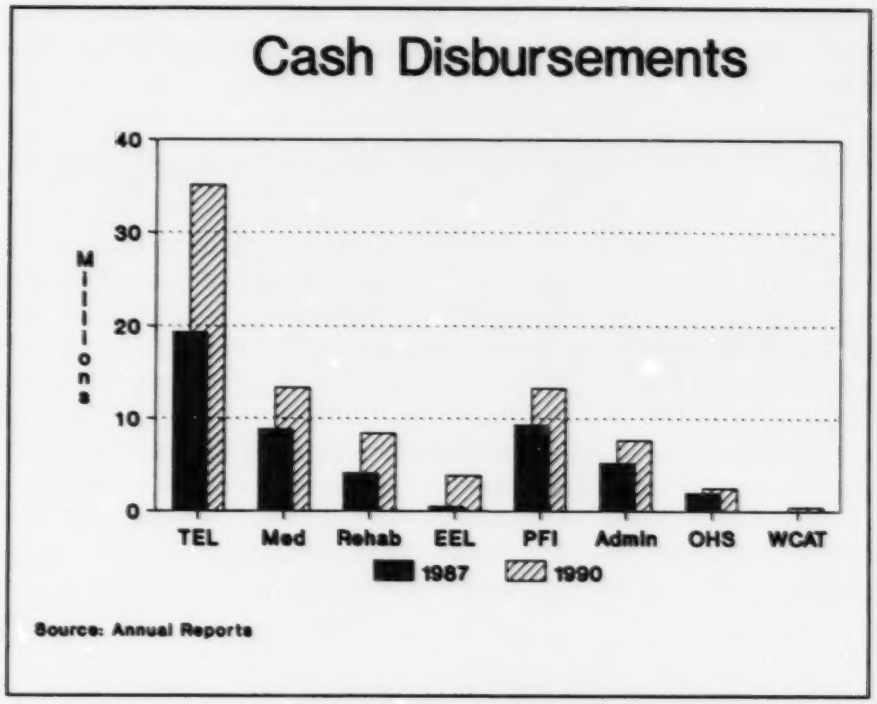


Table 4
Workers Compensation Injuries

	1987	1988	1989	1990
Lost time/fatal	9,021	9,986	10,663	10,428
Medical only	8,278	8,796	8,364	8,858
Total	**17,299**	**18,782**	**19,027**	**19,286**

Despite these increases, the provincial economy has not grown substantially over the same five year period. Increases in revenue have resulted from increases in rates as opposed to increases in industrial growth, in other words, there are approximately the same number of businesses as existed five years ago. In today's economic climate and until such time as this climate improves, the Committee has no alternative other than to agree with the Board of the Commission and recommend effective January 1, 1992 a change in the benefit rate.

RECOMMENDATION

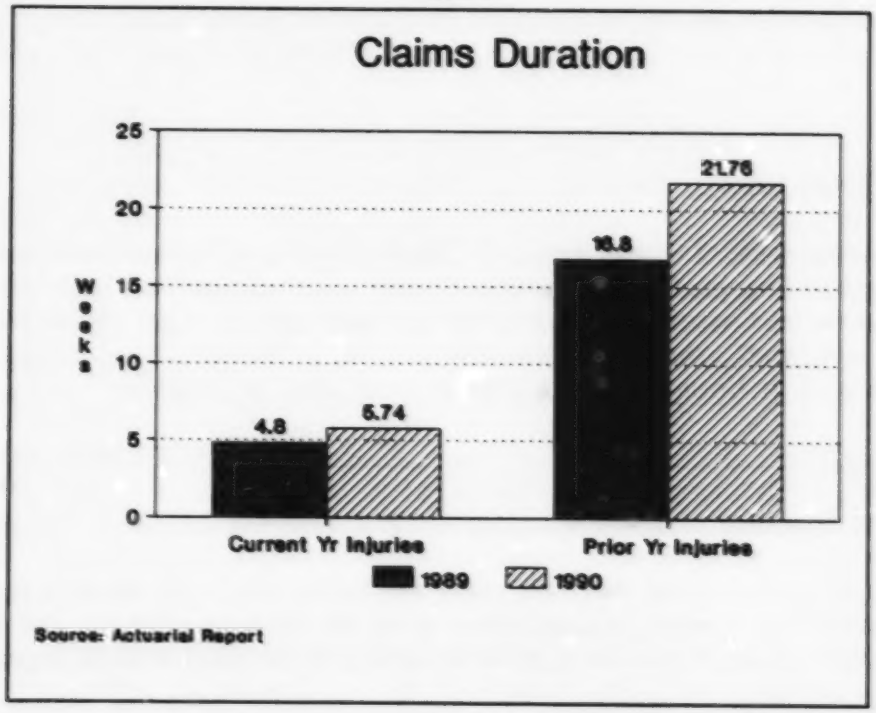
It is recommended that benefits be set at 80% of net income.

POTENTIAL RESULT

This recommendation will result in a saving of $5.6 million annually.

Of major concern to the Committee was the constant increase in the cost of the temporary earnings loss payments over the last several years. (See Graph 4) These payments constitute wage loss payments disbursed to persons on claims for relatively short periods. The results of the recent actuarial report show that this increase is caused in part by persons remaining on claim for longer periods than in the past and as illustrated in Graph 5 even in a one year period claims duration continued to escalate.

Graph 5



Since this study it was noted that claims duration has continued to extend even further and therefore the Committee has decided to recommend the following reduction at the 14 week claimant period.

RECOMMENDATION

It is further recommended that at the 14 week claimant review period, benefits should be set at 75% of net income.

POTENTIAL RESULT

This recommendation will reduce expenditures however the Committee was not able to determine the amount.

There were some concerns raised that employees on Workers' Compensation were actually receiving more net income than had they continued working. This is the result of employees and companies having insurance plans, both corporate and private, which allow for disability benefits while injured. The Committee views this situation as inequitable.

RECOMMENDATION

It is recommended that all Workers' Compensation benefits be net of private and/or corporate insurance plans as well as Canada Pension benefits. For administration purposes the Commission should implement a system whereby the applicants outline any such benefits that may become due prior to and during a claim. (The disclaimer form used by Unemployment Insurance could serve as a option).

POTENTIAL RESULT

It is without a doubt that this recommendation will bring about a decrease in expenditures, however, without information on claimant's private and corporate insurance plans, it was not possible to determine the amount of decrease.

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b. Indexing

Prior to 1991, the Commission had adopted a policy where compensation benefits to injured workers were indexed based on the Industrial Aggregate Wage Index (IAI) and/or information from employer/union sources. Given the administrative burden of such a system and the inequities that exist, the current policy has since been amended to reflect indexing using only IAI and spousal benefits receive an automatic adjustment once the Commission has received approval from the Provincial Cabinet. Those on longer term benefits, EEL, receive adjustments for IAI once a claim has been reviewed to its pre-injury wage to determine if the benefits need to be adjusted. If a claimant is financially worse off compared to the time of injury, adjustments are made accordingly.

The indexing policies in other Provinces were reviewed and the results show that in other provincial jurisdictions, the majority of benefits are escalated based on changes in consumer prices as determined by the Consumer Price Index (CPI) rather than the IAI. It was also noted the Federal Government uses this baseline indexing for Canadian Pension Plan payments.

In 1990, it was estimated that the effect of indexation of benefits using IAI, would mean an additional cost to the accident fund of three million dollars and over time the level of indexing for these claims would cost $51 million. If the Commission followed the policy in most other provincial jurisdictions and indexed benefits based on CPI rather than IAI, the total 1990 liability would be reduced from $51 million to $30 million, an overall savings of $21 million.

RECOMMENDATION

The Committee recommends that the Commission use the Consumer Price Index in its escalation of benefits given that it accounts for the changes in consumer prices and is consistent with the policy in most other jurisdictions.

POTENTIAL RESULT

This will result in a $21 million reduction in the unfunded liability.

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c. Annuities

In keeping with the wage loss philosophy, the objective of compensation is not only to compensate for immediate loss of wages, but also to replace loss of retirement income arising from long-term wage loss as legislated under section 63 of the Compensation Act. When a worker remains on compensation for greater than 24 months the Commission sets aside an amount into a reserve or superannuation plan to serve as a replacement for retirement benefits lost.

In meeting its responsibility in this regard, the Commission contributes annually an amount equal to 10% of the earnings loss benefits. At the age of 65 the amount accrued in this fund, including interest as determined by the return on the Commission's investments, provides retirement benefits for workers. The purpose of this annuity then becomes to compensate a worker for any losses of retirement pension that resulted due to injury.

The annuity contribution is, however, set up for workers with or without employer sponsored pension plans, that is, without a worker actually demonstrating a retirement wage loss. The rationale for the 10% contribution for workers enroled in employer sponsored pension plans is clear, that is this represents part of their retirement loss. However, the 1989 statistics show that only 44% of those employed in the Province were enroled in pension plans, therefore it is likely that the majority of long-term Workers' Compensation claimants are not members of pension plans.

The rationale for the 10% annuity contributions for workers without private pension plans is then based on the potential loss of Canada Pension Plan (CPP) retirement benefits. However, as with private pension plans, employees who continue working, contribute a share of their wages to the anticipated CPP retirement income. The rationale for this 10% annual contribution paid solely by the Commission appears to be well beyond replacing the actual retirement wage loss.

The accrued liability for this retirement annuity fund in 1989 cost the injury fund a total of $6.9 million of which $1.9 million represents the cost of past contributions and $5 million for future contributions for accidents in 1989 or earlier. In 1990, this liability rose to $8.8 million representing $2.7 million in actual costs and $6.1 million for future contributions of existing claims. It has also been noted that the amount of this recorded liability is somewhat understated and that the liability may be much greater, the reason being that many of those currently eligible have yet to be processed by the Commission. Once all existing claims have been processed, the cost of this annuity provision and the unfunded liability in 1990 will increase even further.

RECOMMENDATION

The Committee recommends that the defined benefit approach be adopted whereby the Commission contributes an amount equal to the pre-injury employer retirement contributions. It is also recommended that workers be allowed to pay pension contributions equivalent to their contributions prior to injury. If workers opt not to contribute, the Commission remains responsible for the proportion of benefits that employers would normally contribute.

POTENTIAL RESULT

This will ensure that workers not lose the eligible pre-injury retirement benefits. It is without a doubt that this recommendation will bring about a decrease in expenditures, however, without information on claimants retirement plans, it was not possible to determine the amount of decrease.

d. Interest on Delayed Compensation Payments

The Commission does not currently pay interest on delayed compensation payments. Delays are caused by many factors including medical evidence, delayed reporting, incomplete files, claims overturned by the Appeals Tribunal, etc. The Commission has proposed a policy on this issue and wishes to have the interest policy effective as of January 1, 1992. The Workers' Compensation Act, in its present form, does not have provisions for interest on delayed payments. From a review of several other jurisdictions, it was noted that Ontario is the only Province who pays interest on delayed compensation payments.

Although this issue was not addressed by the majority of those who presented briefs, several did express opinions to the Committee. Concerns were expressed relating to interest paid on all delayed benefits and its effect on claims management given the multitude of factors relating to delays in claims. There is no doubt that the system of compensation cannot be held responsible for all the delays caused by those not directly involved in the claims administration. From the Committee's perspective, the Commission is obligated to ensure that when delays occur in direct relation to claims administration and caused by circumstances over which the Commission has control, it is only fair and equitable that claimants receive interest.

RECOMMENDATION

It is recommended that as proposed by the Commission, effective January 1, 1992, interest will be awarded to claimants where payments of wage loss compensation benefits have been unduly delayed due to circumstances over which the Commission has control. This should be a requirement in law with inclusion in the Workers' Compensation Act.

POTENTIAL RESULT

Given that the information on those eligible was not available, it was not possible to determine the cost of this recommendation.

D. GENERAL RECOMMENDATIONS

i. Outstanding Issues 1986 Review Committee

The Committee was asked to review several recommendations from the 1986 Review Committee including recommendation 25 on burial expenses, recommendation 65 on the composition of the Board, recommendation 66 on Board appointments, and recommendation 104 on a study into the establishment of a Workers' Advocate position . As recommendations 65 and 66 are included in the section on Organizational Structure, a detailed discussion is not warranted in this section. The Committee does wish that recommendation 25 be implemented requiring changes to regulation 19(1)(h) that burial expenses to be raised from $1,500 to $3,000.

The Committee also reviewed recommendation 104 on the establishment of a Workers' Advocate position to assist claimants in appeals and claims. It was the opinion of this Committee, after hearing the concerns raised by both representatives, there is a definite need for these positions for both labour and industry. These positions should remain at arms length from the Commission and not be directly employed by the Commission or subject to the control of the Board and therefore, should come under the direction of the Department of Employment and Labour Relations. The function of this position in the Appeals process should not be as representative at a Workers' Compensation Appeals Tribunal Hearing rather to serve as assisting the claimant in preparation.

RECOMMENDATION

This Committee recommends that the positions of employer and employee advocate be implemented.

POTENTIAL RESULT

For the worker, this would mean ready access to an advocate for guidance during periods of recovery and for the employer, it will allow for greater representation and accountability of issues brought before the Appeals Tribunal and the Commission.

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ii. Third Party Action

The Committee was asked to re-evaluate the current legislative provisions respecting the right of injured workers to claim compensation and commence third party legal action. The current provision under Section 33 was enacted in 1982 as a result of the Ocean Ranger disaster. Since this time the Commission has experienced difficulties with administering this section and has requested a review. The Board has adopted the position that the legislation should be amended to stipulate the choice of a worker to claim compensation or take legal action as is the case in most other jurisdictions. Such an election would allow the Board to take any necessary legal action and if not, would allow the person to take such action.

The legal interpretation of this section is that if a worker claims and recovers compensation from both the Commission and a third party, the worker may be required to reimburse the Commission for compensation. If the worker claims compensation and does not pursue the civil claim within a reasonable time the Commission is subrogated to that claim. In other jurisdictions, in particular British Columbia, Ontario, New Brunswick, Nova Scotia and PEI where a civil claim is not barred the worker may elect, in most cases, to pursue the remedy in damages or to claim compensation. In these Provinces, if the worker claims compensation the Board is subrogated to the civil right of action and if the Board commences an action pursuant to that right, then in most jurisdictions any separate action by the worker will be dismissed. To avoid the confusion and administration difficulties that have occurred, Newfoundland legislation should follow that of most other jurisdictions.

RECOMMENDATION

It is recommended that this section be amended to stipulate the choice of a worker to claim compensation or take legal action.

POTENTIAL RESULT

This recommendation will clarify the intent of third party claims and provide ease of administration.

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iii. Definition of Remarriage/Age Limit of Dependent Children

Section 59 addresses the remarriage of a spouse with the definition of a spouse included in Section 2 (W); the Act does not however contain a definition of remarriage. As well Section 60 provides an age limit of 16 years for payments to be made to a dependent child. In several other jurisdictions namely British Columbia, Alberta, Quebec, Nova Scotia and PEI, the age limit is 18, while in Ontario the age limit is 19. With the introduction of Grade 12 into the Newfoundland and Labrador Secondary Education system, students are now on average 18 years of age before graduation. With respect to other provincial legislation, the Divorce Act, 1985 and the Family Law Act uses the age of 19 in its definition of dependency.

RECOMMENDATION

It is recommended that a definition of remarriage be added to Section 2 of the Act and that Section 60 be amended so that the age of dependent children is raised to 18 years.

POTENTIAL RESULT

This will ensure that the Workers' Compensation Act is consistent with other Provincial legislation and equitable to spouses and dependents.

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iv. Extending Coverage - Rescue Work

This issue was referred from the Commission, however, several parties during the public hearing process also expressed concern on the relevance of coverage to individuals involved in rescue work. Section 67 deals with the legislative requirements under the Act for those involved in rescue work and reads as follows:

> " In the case of a worker suffering injury by accident arising out of and in the course of the employment while doing rescue work for the saving of human life in a mine or in any industry, or the explosion, injury, fire or other catastrophe, the compensation payable in that case shall be computed on the basis of one hundred percent of net earnings in lieu of the percentages otherwise provided in this Act".

The legal interpretation indicates that the wording of this section is limited to instances where compensation is payable for saving human life in specific industries or

employment such as mining, explosion, injury, fire, etc. However, the underlying theme of compensation is to provide coverage from injuries arising out of and in the course of employment for those involved in rescue operations. There should be no distinction whatsoever with respect to compensation that the person being rescued or attempted to be rescued was in a particular work setting or environment.

RECOMMENDATION

It is recommended that workers be compensated while doing rescue work during the course of employment regardless of whether the person being rescued is working or not at the time the injury is sustained to the rescuer. This will require a legislative amendment.

POTENTIAL RESULT

This will ensure that injured rescue workers are eligible to receive compensation as currently provided for regardless of the status of the person being rescued.

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v. Assessment Rates in the Fishing Industry

The Committee heard numerous concerns by employers and others about the inequities that exist in relation to the higher offshore trawler assessment rates in Newfoundland as compared to Nova Scotia. The rate charged by the Commission to offshore trawler companies in 1991 was set at $13.75 per hundred dollars of payroll compared to the rate of $4.44 in Nova Scotia. Offshore fishing vessel operators have noted that the differences in these rates has served as a deterrent for companies to operate in this Province and some operators have established bases elsewhere.

The Committee recognizes that the rate variations have placed Newfoundland companies at a financial disadvantage and that the Province may be losing the employment benefits associated with this activity. After inquiring into the reasons for this variance it was noted that it is not possible to determine the exact causes.

Presentation was also made on the issue of coverage for inshore fishermen noting that fish buyers collect and remit Workers' Compensation premiums while control of safety features remains with the owner of the vessel. Although the Committee felt that this issue was outside its mandate it believes that these issues, that is both the inshore and offshore concerns, should be addressed and makes the following recommendation.

RECOMMENDATION

It is recommended that the Commission consult with buyers, offshore operators and fishermen on options for assessment rate setting.

POTENTIAL RESULT

The effect of this will provide all parties with the opportunity to discussing alternatives.

vi. Workers' Compensation and the Appeals Tribunal

The Committee was also requested to review the role of the Board of Directors in conjunction with the Appeals Tribunal. The Workers' Compensation Act under Section 21.7 outlines the relationship between the Board of Directors and Appeal Tribunal. Both the Board and Tribunal have asked for a review of this section. The Act reads as follows:

(1) " Where a matter to be decided by the Appeal Tribunal requires an interpretation of policy and general law prior to a decision being rendered, the Board of Directors shall review and determine the issue or interpretation of the policy and general law and the Tribunal shall consider the determination of the Board of Directors.

(2) Where the Board of Directors conducts a review, it shall either hold a hearing and afford the parties likely to be affected by its determination an opportunity to make oral and written submissions, or it shall permit the parties likely to be affected by its determination to make written submissions as the Board of Directors may direct.

(3) The Board of Directors shall give its determination and direction, if any, under this section in writing together with its reasons therefore.

(4) Where the Tribunal makes a decision which, in the opinion of the Commission is not consistent with established policy or the intent of this Act, the Board of Directors shall direct a review and determination as set out in subsections (1) to (3).

(5) Pending its determination, the Board of Directors, with respect to the decision that is the subject-matter of the review, may stay the enforcement or execution of the order made under the decision or may vacate the order if it has been implemented".

From the legal interpretation of subsection 21.7 (1), this legislation restricts the role of the Tribunal which serves as an independent decision-making body in several ways. First the Board interprets the policies and general law for the Tribunal and the Tribunal then has to decide these matters based upon the interpretation of the Board. The role of the Board of Directors with the Tribunal should be to provide policy statements and interpretations of that policy. Where a policy does not exist, the Tribunal should refer it back to the Board for policy development and thereafter, the Tribunal can render its decision.

The interpretation of subsection 21.7 (4) provides for a decision of the Appeals Tribunal to be subject to an Appeal to the Court and where necessary a review by the Board of Directors. Under Subsection 21.7 (5) the Board is entitled to enforce or execute the Appeals decision or it may also vacate the order.

RECOMMENDATION

It is the opinion of the Committee that for the Appeals process to be credible and fair, the decisions of the Appeals Tribunal should be final and only vacated by the Courts. It is recommended that subsections (4) and (5) be deleted from the Act.

POTENTIAL RESULT

This recommendation should ensure that the appeals process is equitable.

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vii. Industrial Disease

The issue of industrial disease was also referred to the Committee for review and the Committee obtained the assistance of the Canadian Centre for Occupational Health and Safety for their expertise and experience. The Centre was asked to review the existing four policies on industrial disease and identify any deficiencies. The Centre was also asked to

identify criteria for development of occupational disease policies. The following is the results of this exercise.

a. Development of Criteria

The purpose of preparing new or reviewing existing compensation criteria is to resolve cases in a prompt, predictable, and fair manner. It involves the evaluation of a specific technical evidence by different parties and adjudicators. For this reason criteria development should be the responsibility of a group consisting of experts from the compensation board, outside experts and representatives of stakeholders (government, industry, labour) perhaps a Review Board as required. The mandate of such a board would include:

(a) development and revision of criteria for the evaluation of claims respecting industrial diseases;

(b) investigation of possible industrial diseases;

(c) determine whether a probable/connection exists between a disease and an industrial process, trade or occupation; and

(d) outline eligibility rules on compensation for claims respecting industrial diseases;

In a review of the procedures used by Canada, United States and some European jurisdictions, it was noted that such protocols, although differing from one jurisdiction to another, have evolved over the years and requires considerable effort. The information from this group together with the new scientific evidence regarding risk factors, the industrial base of the Province and the socioeconomic considerations should be used to develop a draft criteria or consultative document. Such draft criteria should be made available to interested parties, stakeholders and scientific communities and their input in the form of submissions should be presented before the review. The review board should then publish the criteria (amended criteria) and rationale for acceptance or rejection of submissions.

b. Factors to be considered

Scientific, medical, legal, social, economic, administrative and political factors need consideration in developing criteria for compensation including:

- relevance of the disease/health condition with respect to the industrial base of the jurisdiction;
- availability of reliable diagnostic methods for identifying the disease;
- scientific evidence regarding the work relatedness of the disease;
- the extent of current and future disability;
- a standard regarding exposure limit;

- clarity of guidelines for the decision making process related to claims;
- socioeconomic factors;
- rehabilitation possibilities;
- exposure control to minimize the risk of industrial disease in question; and
- administrative changes for speedy disposition of compensation claims.

c. Information Sources

The source will depend on the type of information sought using the Canadian Centre for Occupational Health and Safety (CCOHS), Health and Welfare Canada, Labour Canada and Provincial Ministries of Labour and Health, Provincial Occupational Health and Safety Departments and consultants in occupational health and safety. The Inquiries Services of CCOHS can serve as a starting point as it provides unbiased information and provides direction on other relevant sources. After reviewing this information, the Committee recommends the following:

RECOMMENDATION

It is the opinion of the Committee that the Commission should use the above information as guidelines in establishing industrial disease policies.

POTENTIAL RESULT

This recommendation should ensure that the Commission has adequate mechanisms for examining industrial diseases.

E. SUMMARY OF RECOMMENDATIONS

1. The Board of Directors meet on a regular monthly basis, with its function limited to that of policy, program planning and financial issues thereby distancing itself from the daily activities of the Commission. The size of the Board be reduced from twelve to seven members by eliminating the three positions of public representatives and that of vice-chair. Representation on the Board should include three members each from the employee and employer organizations, as well as an independent chair. To ensure continuity within the Board itself, it is recommended that Board members be appointed for a three year term with appointments staggered.

2. It is, therefore recommended that the position of full-time Chief Executive Officer be appointed by the Board, subject to the approval of the Lieutenant Governor in Council and the part-time Chair be appointed by the Lieutenant Governor in Council.

3. It is, therefore recommended that Commission establish a Medical Advisory Committee through consultations with the Newfoundland Medical Association to advise the Board of Directors on issues related to medical policy.

4. It is also recommended that responsibility for a claim remain with the Claims Department and be the responsibility of the claim's supervisor as long as the claim exists.

5. The Committee recommends that the Commission begin immediately to restructure its organization intended at streamlining and making better use of its resources. This review should concentrate on reorganization along the functional lines presented in Chart 2 as can be compared with its existing organizational structure in Chart 1.

6. In the short term, it is recommended that the Assistant Deputy Minister of the Division of Occupational Health and Safety sit on the Board of Directors as an ex-officio member. The Committee also recommends that once there are noticeable improvements in the Workers' Compensation system and within two years from the date of this report, the issue of divisional transfer to Workers' Compensation should be reviewed as outlined in Chart 3.

7. It is recommended that the Commission offer an increased level of service to claimants by beginning immediately to regionalize services into regional offices in Clarenville and St. John's separating its regional office functions from its head office functions. In addition, it should offer an increased level of service in its existing regional offices in Central and Western Newfoundland including its existing Labrador sub-regional function. Regional accountability should include claims adjudication, rehabilitation, medical and internal appeals as outlined in Chart 4. During the

transition to regional autonomy, it is expected that the staff compliment of the Commission not increase, rather implementation will be carried out through the use of existing staff. When the issue of the Occupational Health and Safety Division transfer to Workers' Compensation is reviewed, the regional office functions should be as outlined in Chart 5.

8. It is recommended that the Commission undertake to increase the priority of its research, policy and planning functions and that a five year strategic plan be developed.

9. It is, therefore recommended that the Commission eliminate the first level of appeal and implement the system as outlined in Chart 7.

10. The Committee recommends that the educational ability of the Division be strengthened on a province-wide basis such that it becomes more involved with the public, employees and industry in increasing programs, services, and awareness. To accomplish this additional funds need to be allocated to educational programming.

11. It is recommended that the Division be supported by appropriate technical staff with expertise in occupational medicine, industrial hygiene, ergonomics, engineering and other disciplines as necessary, to administer statutes, regulations and to offer assistance to occupational health and safety committees and client groups. To ensure these programs and services are delivered in a timely and effective manner, the following must happen:

- the special reserve fund set up for the purpose of research and special studies, which should be set at one million dollars, be immediately freed up and
- the provincial government hiring freeze that applies to the Occupational Health and Safely Division be immediately removed to enable it to meet its staffing needs.

12. It is recommended that regionally, inspectors must, without delay, survey the workplace in their assignments, initiate actions and provide assistance to ensure that an optimum level of committee activity is reached in the shortest possible time.

13. It is recommended that the Division become active in an audit procedure that verifies that the workplace Occupational Health and Safety Committee has supported an employer in its application for merit under experience rating.

14. The Committee is recommending that the Occupational Health and Safety Division become more proactive in providing information and activities relating to proper sprain and strain prevention.

15. It is recommended that the membership on the Advisory Council on Occupational Health and Safety be reduced to seven representatives with an independent Chair and three representatives each from employer and employee organizations. The two ex-officio representatives will remain on the Council.

16. The Committee is recommending that Government should immediately proclaim the chiropractic legislation and that the Commission pursue more actively with health care providers, initiatives such as priority access and early referral to specialists, especially orthopaedic.

17. It is recommended that Workers' Compensation consult with the medical community on the possibility of establishing programs that will increase the dialogue between the local medical profession and the Commission staff. This will be facilitated by the increased autonomy at the regional Workers' Compensation offices.

18. It is recommended that the number of cases referred to the Medical Department be kept at a minimum. Claim adjudicators will require considerable training to have a better understanding of the claim and its normal injury recovery period and will make the majority of decisions regarding claim's acceptance.

19. It is also recommended that in consultation with the medical community, the Commission should implement a system of measurement on average injury duration so that the Commission can investigate immediately the rationale for additional recovery time.

20. It is the opinion of the Committee that where workers are medically able, rehabilitation should commence immediately.

21. It is recommended that the duties of the Workers' Compensation rehabilitation workers be advisory to claims and involve the principles of early and continued intervention, regional in nature, with rehabilitation decisions made through consultation with employers, employees, unions, medical profession, federal and provincial governments, and others involved in the regional labour market.

22. It is, therefore recommended that a cap be placed on the number of rehabilitation programs with participation minimized and normally not to exceed two.

23. The Committee recommends that employers be required to participate in ease back and modified work programs when deemed appropriate by the Commission who should review the workplace to ensure the needs of the employees are met.

24. It is recommended that the Commission cease to use the Multi-Disciplinary Assessment Program solely at the Miller Centre and begin to avail of these services at a regional level if available.

25. It is recommended that the Commission review its policy on pregnancy and rehabilitation to allow for flexibility in dealing with clients who are pregnant.

26. The Committee, while recognizing the current fiscal constraints on employers, is nevertheless recommending that additional surcharges be placed on employers over a 20 year period to eliminate the current unfunded liability. The rate of surcharge will be dependent first on a revised level of unfunded liability but should be set at 7.5% annually over the initial three to five year period subject to further review after this time.

27. It is recommended that the Commission implement a system of collecting Workers' Compensation assessments on a quarterly basis.

28. The Committee recommends that the Commission begin immediately to reduce the number of rate groups by amalgamating groups with similar claim cost ratios. It is also recommended that the Commission establish distinct rates for rate groups and examine the option of setting a minimum rate.

29. The Commission begin immediately to implement a system of pre-funding of limited life projects. An option could include projects of one to five years in duration at an aggregate cost of two billion dollars or more.

30. It is recommended that the system of experience rating, as put forth by the Commission, be implemented however an employer's efforts in rehabilitation are to be included in this process. For an employer to apply and receive a merit under this system, it must have the support of the Workplace Occupational Health and Safety Committee subject to verification by an audit procedure conducted by the Division of Occupational Health and Safety.

31. It is recommended that the Commission enter into consultations with an insurance company on the costs of nine million dollars of disaster insurance and assuming this option is favourable, the ten million dollars disaster reserve be reduced to $1 million and any surplus used to offset the unfunded liability.

32. It is further recommended that the reserve for Occupational Health and Safety be reduced to one million dollars and the surplus used to offset the unfunded liability. This will require a legislative amendment to the Occupational Health and Safety Act.

33. It is recommended that benefits be set at 80% of net income.

34. It is further recommended that at the 14 week claimant review period, benefits should be set at 75% of net income.

35. It is recommended that all Workers' Compensation benefits be net of private and/or corporate insurance plans as well as Canada Pension benefits. For administration purposes the Commission should implement a system whereby the applicants outline any such benefits that may become due prior to and during a claim. (The disclaimer form used by Unemployment Insurance could serve as a option).

36. The Committee recommends that the Commission use the Consumer Price Index in its escalation of benefits given that it accounts for the changes in consumer prices and is consistent with the policy in most other jurisdictions.

37. The Committee recommends that the defined benefit approach be adopted whereby the Commission contributes an amount equal to the pre-injury employer retirement contributions. It is also recommended that workers be allowed to pay pension contributions equivalent to their contributions prior to injury. If workers opt not to contribute, the Commission remains responsible for the proportion of benefits that employers would normally contribute.

38. It is recommended that as proposed by the Commission, effective January 1, 1992, interest will be awarded to claimants where payments of wage loss compensation benefits have been unduly delayed due to circumstances over which the Commission has control. This should be a requirement in law with inclusion in the Workers' Compensation Act.

39. This Committee recommends that the positions of employer and employee advocate be implemented.

40. It is recommended that this section be amended to stipulate the choice of a worker to claim compensation or take legal action.

41. It is recommended that a definition of remarriage be added to Section 2 of the Act and that Section 60 be amended so that the age of dependent children is raised to 18 years.

42. It is recommended that workers be compensated while doing rescue work during the course of employment regardless of whether the person being rescued is working or not at the time the injury is sustained to the rescuer. This will require a legislative amendment.

43. It is recommended that the Commission consult with buyers, offshore operators and fishermen on options for assessment rate setting.

44. It is the opinion of the Committee that for the Appeals process to be credible and fair, the decisions of the Appeals Tribunal should be final and only vacated by the Courts. It is recommended that subsections (4) and (5) be deleted from the Act.

45. It is the opinion of the Committee that the Commission should use the above information as guidelines in establishing industrial disease policies.

APPENDIX - SUBMISSIONS

i. Written and/or Oral Submissions

Anstey, Mark
Association of Injured and Disabled Nurses
Atlantic Building Supply Dealers Association
Atlantic Engineering Consultants Ltd.
Baker, Louise
Beck, Jessie
Burton, Ruth-Ann
Burton, Robert Dr.
Butler, Marie
Canada Post Corporation, Dr. Roger Rickwood
Canadian Coast Guard Local 90915
Canadian Union of Public Employees
Canadian Coast Guard
Chard, Raymond
Clearwater Fine Foods Inc.
Communications and Electrical Workers of Canada
Corner Brook & District Labour Council
Corner Brook Pulp and Paper Limited
Doyle, Roland, Mr.
Doyle, Roland Sr.
Drake, Susan
Edwards, Ogust
Edwards, Mrs.
Federally Regulated Employers - Transportation and Communication
Fishermen, Food and Allied Workers (Matt Murphy)
Fishermen, Food and Allied Workers (Kevin Carroll)
Fishermen's Association of Newfoundland and Labrador
Fishery Products International Limited
Fitzpatrick, Rose
G. Pelley Limited
General Hospital Health Sciences Centre
Green Bay/White Bay District Labour Council
Guilfoyle, Mike
Hope Brook Gold Inc.
Hubin, Marie
International Brotherhood of Electrical Workers, Local 404
Iron Ore Company of Canada
Lambe, Olivia
Lambert, Mary
Lodder, Jo, Mrs.
Lundrigan, Herbert
Lundrigans-Comstock Limited

Marine Workers, Local 20, Marystown
Miller, Ed
Moore, Craig
Murphy, Brian K., Dr.
National Sea Products Limited
New World Fitness
Newfoundland Medical Association
Newfoundland & Labrador Construction Association
Newfoundland and Labrador Nurses' Union
Newfoundland and Labrador Road Builders Association
Newfoundland Hospital and Nursing Home Association
Newfoundland Association of Public Employees
Newfoundland & Labrador Chiropractic Association
Newfoundland Safety Council
Newfoundland and Labrador Federation of Labour
Newfoundland and Labrador Medical Association
Newfoundland and Labrador Employers' Council
Pardy, Don
Parsons, Leonard
Peddle, Barbara
Pender's Mechanical & Consultants Ltd.
Physicians of Newfoundland and Labrador
Picco and White
Public Service Alliance of Canada, Taxation Centre, Sheila Hynes
Public Service Alliance of Canada, Regional Women's Committee, Caroline Ryan
Puddister Trading Co. Ltd.
Saunders, Martin
Shapter, Edward A., Dr.
Slaney, Dave
Slaney, Mrs.
Slaney, Loyola
Slaney, Alonzo
St. Lawrence Town Council
St. John's and District Labour Council
St. John's Board of Trade
Tarrant, Benjamin
Tarrant, Carl
Tobin, Phillip
Tobin, Madeline
Tobin, Bibianna
United Steelworkers of America, Local 7713
United Steelworkers of America, Local 6285
United Steelworkers of America
United Food & Commercial Workers Union, Local 2020

Van Dermark, Peter
Vincer, Donna
Workers' Compensation Commission of Newfoundland and Labrador